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POLITICAL SCIENCE QUARTERLY.

THE FINANCIAL RECORD OF THE SECOND CLEVELAND ADMINISTRATION. II.[1]

ONE influence, and probably only one, could have saved the Cleveland administration from the unfortunate results of the party rupture over the repeal of the silver-purchase act. If trade had instantly improved, after the vote of October 30, 1893, if prices had continued to recover, if credit had been restored — the people would probably have ascribed the merit to the president's policy, exactly as the entire political benefit of the trade recovery of 1879 accrued to the sound-money wing of the Republicans.

But no such result was possible. All markets had risen, it is true, since the worst midsummer paroxysm relaxed. European capital had for two months returned to this country as a buyer. This was, however, only because, with the extreme collapse of domestic credit, our own markets had fallen below the level of the outside world. The sales then made by domestic holders of grain, securities and merchandise were made at heavy sacrifices, often to avert bankruptcy. When, therefore, the foreign buying ceased and home demand was left as the sole support of the market, the consequence of the wholesale wreck of capital was evident. A period of prolonged liquidation followed, and the markets lapsed again into stagnation and declining prices.

This, it should be observed, is a phenomenon common to all corresponding periods in the aftermath of commercial

[1] *Cf.* POLITICAL SCIENCE QUARTERLY for June, 1897.

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panics, home or foreign. Events pursued exactly the same course in 1873, for instance, and in 1857. But in 1893 the results were, for two reasons, specially unfortunate. Reaction from the short-lived movement of recovery came, to begin with, almost at the moment when the repeal bill passed, and the opponents of repeal therefore claimed that their stand in Congress was vindicated. In the second place, the delusive recovery of the early autumn had encouraged among administration leaders, to an almost incredible degree, a belief that the ill effects of panic had vanished permanently. This, as we shall see, influenced all the government's plans of revenue legislation, which were upset completely in the later returning trade stagnation. The necessity for some reconstruction of the revenue was imperative. We have already seen that the reckless laws of 1890 were by this time causing such heavy monthly deficits as to menace even the reserve against the legal tenders. Let us now see what had actually happened since the April crisis in treasury-note redemption.

On March 7, 1893, when the Harrison treasury administration surrendered office, the surplus gold fund stood at $100,982,410.[1] It would, however, have fallen far below the hundred-million mark during the Harrison administration, and would thereby have anticipated by at least two months the disturbances of April, but for the help of outside institutions. Mr. Harrison's secretary of the treasury, even while making his preparations for a bond issue under the act of 1875,[2] came to New York in the first week of February, and made an urgent personal appeal to the banks to give gold to the treasury in exchange for notes.[3] They did eventually turn over to the government, from their own gold holdings, $6,380,000,[4] and this is all that saved the Harrison administration from the consequences of its own mischievous legislation.[5]

[1] Secretary Carlisle, Annual Treasury Report for 1893, p. lxxii.

[2] Secretary Foster, letter of instructions to chief of Bureau of Engraving and Printing, February 20, 1893.

[3] *New York Financial Chronicle*, February 11, 1893. [4] *Ibid.*

[5] During February, 1893, the treasury's gold reserve fell from $108,181,713 to $103,284,219, a net loss of $4,897,494 (Annual Treasury Report for 1893, p. 75).

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We have seen that the declarations of April 20 and April 23 pledged the new administration to continuance of gold payments on all the government's legal-tender notes alike, so long as the treasury held gold "lawfully available for that purpose." But as to what the secretary would do in case the surplus gold fund were to be exhausted he gave no intimation; decision was simply postponed. A bond issue in emergency was feasible, but, as will presently appear, the administration was very reluctant to resort to it. At the time, two administration measures of the first importance were about to come before Congress — repeal of the silver-purchase act and reform of the revenue system. It was perhaps only human that the secretary should shrink, pending the action on these measures, from so unpopular a move as increase in the public debt.

Postponement, whether wise or not, left only one alternative, and this, unfortunately, was the adoption of Secretary Foster's makeshift. A so-called patriotic movement to "reimburse" the treasury was started among the banks throughout the country; as a result the government obtained, through use of its surplus legal tenders, $10,000,000 additional gold. This makeshift raised the treasury gold reserve by March 25 to $107,462,682, against the $100,982,410 when Secretary Carlisle entered office.[1] But in April gold exports again grew heavy, with consequent presentation of legal tenders for redemption, and the secretary again turned his eyes to the banking institutions.[2] A more disquieting spectacle in government finance was never witnessed in this country.

So far as it affected the treasury's gold reserve, the panic in the summer of 1893 had a curious double influence. It put an end, of course, to the loan of gold by banks to the government. But at the same time, through the violent fall in foreign exchange, it checked gold exports and therefore relieved the

But withdrawals of treasury gold for export at New York that month were $12,250,000. If, therefore, the city banks had not helped out Secretary Foster, the gold reserve on February 28, four days before Mr. Cleveland's administration began, would have stood at $95,931,000.

[1] Secretary Carlisle, Annual Treasury Report for 1893, p. lxxii.

[2] *Ibid.*

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treasury from the strain of note redemption.[1] Indirectly, it did more. The excessive fall in prices led to the inflow of European capital, as already noticed; this movement, combined with the artificial currency contraction, caused during the autumn months an import of fifty millions of gold from Europe. A good part of this gold was paid directly into the treasury; hoarding of currency in the panic had temporarily made imported gold almost the sole available medium for large payments.[2] During September fifty-nine per cent of the New York customs revenue, or $4,762,888, was paid in gold coin; in the four months ending with November, gold customs payments at that city aggregated $13,819,917.[3]

It is reasonable to suppose, although no official figures have been published, that gold payments cut a similarly large figure in the federal revenue at all other receiving centers. It would therefore seem, at first consideration, that, since no gold was taken after July for export, and since the greater part of the $123,000,000 federal receipts in the next five months was paid in gold, the treasury's gold reserve, between July and December, should have increased very heavily. Yet nothing of the sort occurred. On July 31 the treasury's gold balance footed up $99,202,933;[4] its highest level of the season, $103,683,290, was reached on August 10;[5] and from this figure it steadily declined, touching as early as October 19 the unprecedentedly low level of $81,551,385.[6]

[1] See POLITICAL SCIENCE QUARTERLY, IX, 1, 23, 24, 25. [2] *Ibid.*, p. 30.

[3] In the first six months of 1893 less than five per cent of the total New York customs payments were made in gold coin or certificates; in May and June none was thus paid. During the last six months of 1893 payments ranged as follows:

	TOTAL PAYMENTS.	GOLD COIN AND CERTIFICATES.	PER CENT GOLD.
July	$10,220,733	$1,741,740	17.1
August	8,188,032	4,233,212	51.7
September	7,964,839	4,762,889	59.8
October	7,537,386	2,841,595	37.7
November	6,312,807	1,982,221	31.4
December	5,645,908	1,642,759	29.1

— Annual Treasury Report for 1894, p. 121.

[4] Annual Treasury Report for 1893, p. 96. [5] *Ibid.*, p. lxxiii. [6] *Ibid.*

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What was the cause of this depletion of the gold reserve by $22,000,000 at the very moment when the commercial community was paying the bulk of its taxes in gold coin? Mr. Carlisle, writing December 19, 1893, declared that the gold reserve after August 10 "had been diminished by redemption of currency and otherwise."[1] But presentation of notes for gold redemption could not possibly have caused this enormous loss of gold. No gold was exported between July and December, 1893, and much less than a million legal tenders were presented monthly for redemption.[2] The truth of the matter is that the treasury's gold reserve was reduced from $103,683,290 to $81,551,385, in the face of heavy gold receipts in revenue, simply because the government itself was using gold for ordinary payments. Between January and July, 1893, the treasury's payments, made in settlement of New York clearing-house balances, did not include a single gold coin or gold certificate.[3] In the entire fiscal year ending June 30, 1893, out of $224,218,402 aggregate payments on this account only $10,583,000 was paid in gold.[4] But from July, 1893, to January, 1894, inclusive, the treasury paid to the clearing house in gold no less a sum than $98,200,000, which was actually ninety per cent of the total payments made.[5] Between

[1] Annual Treasury Report for 1893, p. lxxiii.

[2] In August $2,348,222 legal tenders were thus redeemed in gold; in September, only $340,727; in October, $695,392; in November, $516,372; in December, $517,418: total redemptions for the five months, $4,418,131, as against $72,138,269 in the seven months preceding. (Annual Treas. Rep., 1896, p. 130.) These redemptions after August, 1893, are all accounted for by the ordinary demand for assay-office bars for use in the jewelry trade.

[3] Annual Treasury Report for 1893, p. 41.

[4] *Ibid.*

[5] Annual Treasury Report for 1894, p. 119. The subjoined table will show the distribution of the payments:

Paid in	U. S. Notes.	Treas. Notes of 1890.	Gold Coin.	Total Payments.
July	$1,968,450	$1,047,625	$4,940,000	$7,096,075
August	98,140	591,780	2,475,000	3,164,920
September	149,765	5,420	15,395,000	15,550,005
October	41,384	55,055	27,645,000	27,741,439
November	967,252	132,040	15,150,000	16,249,292
December	13,729	64,565	13,570,000	13,648,294
January	3,336,919	2,943,000	19,015,000	25,294,919

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August 10 and October 19, as we have seen, the treasury's receipts of gold were enormous; yet it paid out, as its balances clearly proved, $22,000,000 more gold than it received.

There has been plenty of random criticism of this wholesale gold disbursement when the maintenance of a large reserve of gold in the treasury was of the first importance. Yet there was nothing mysterious in the operation. In effect, the government had nothing left but the gold reserve with which to meet its bills. The deficit in revenue — caused, as we have seen, by the reckless financiering of the three preceding years — had by August reduced the treasury's total available supply of cash, including the gold reserve, to $122,058,213.[1] Out of this total sum there were only $22,855,280 legal tenders or silver currency, and by October 31 the holdings of such money had been further reduced to $12,796,459.[2] At least that much of paper currency was needed for the treasury's own daily exchanges and remittances. Yet the excess of government expenditure over income, from August to the end of 1893, averaged $7,000,000 monthly.[3] Clearly, then, the treasury had, in the early autumn of 1893, only three courses before it — to raise a loan at once, to stop payment on regular government appropriations[4] or to use its gold holdings for every-

[1] Annual Treasury Report for 1894, p. 55. National bank notes held for redemption and fractional coin are of course excluded from this computation.

[2] *Ibid.* At that date the total available cash holdings, including the gold reserve, were $97,181,322.

[3] Deficit in August was $9,414,343; in September, $895,254; in October, $5,035,397; in November, $7,322,626; in December, $7,746,234.

[4] It is important to notice that such "holding up" of appropriations as an alternative to using the $100,000,000 gold for ordinary payments would not have been open to the conclusive objection against a similar policy when the gold reserve had been trenched upon only through redemption of legal tenders, as was the case in April, 1893. There is nothing in the statutes or in official opinion to justify refusal to reissue legal tenders thus redeemed. But the use of the gold itself for ordinary payments was a different matter. The House Judiciary Committee of 1892 reported officially "that it was the intention of Congress to fix the minimum amount of this reserve fund at $100,000,000 gold and gold bullion, and that it should be maintained at that sum." — Congressional Record, July 6, 1892. See also the opinions of Secretary Sherman, Annual Treasury Report of 1879, p. x; 1880, p. xiv; Secretary Folger, Annual Treasury Report of 1881, p. x; Secretary McCulloch, Annual Treasury Report for 1884, p. xxxi; Secretary Foster,

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day disbursements. Mr. Carlisle chose the third of these courses.

The secretary's hesitation to issue bonds partly reflected a prevalent and not unreasonable view that, with a session of Congress near at hand, the legislators ought to be consulted. But it is also plain that Mr. Carlisle, despite the official opinion already cited, mistrusted his legal powers. To the plan of stopping payment on appropriations he made no official reference, proposing, instead, that Congress authorize issue of three-per-cent exchequer bills, running one year, to meet a serious deficiency in revenue.[1] In regard to the expedient of issuing bonds under the act of 1875, to restore the gold reserve, an appeal was made to Congress for more definite instructions. "The authority now vested in the secretary of the treasury," President Cleveland wrote in his annual message, "is not as clear as it should be";[2] and the secretary asked in his own report "not only that he should be clothed with full authority to procure and maintain an ample reserve in coin, but that the purposes for which such reserve is to be held and used should be made as comprehensive as the duty imposed upon him by the law";[3] and with this request the matter rested. The administration had made a dignified and statesmanlike appeal, had proposed fair substitutes, and had emphasized its wish to act both in concert with the legislative branch and subject to its approval.

We shall presently see what manner of reception this appeal obtained from Congress. But meantime another problem rose to notice. The question of reconstructing the budget of revenue and expenditure demanded immediate attention. The ruinous influence of the deficit — $32,350,000 for the last six months of 1893[4] — was evident to all observers. Continuance

Annual Treasury Report for 1892, p. xxix. Other secretaries did not explicitly notice the gold reserve, but acquiesced in the interpretation of the law already made.

[1] Annual Treasury Report for 1893, p. lxxi.

[2] December 4, 1893.

[3] Annual Treasury Report for 1893, p. lxxii.

[4] Annual Treasury Report for 1894, p. 22.

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of such a deficit for nine months more would leave the treasury literally without a dollar on hand to pay its bills.[1]

This question of an increase in the revenue was complicated by the fact that radical change in the revenue system was proposed. Such a change was inevitable. The platform of the St. Louis Democratic convention of June 22, 1892, on which the Cleveland administration was elected, pledged reduction in the import duties. Mr. Cleveland's letter of September 26, 1892, accepting the presidential nomination, and his inaugural address of March 4, 1893, emphatically reaffirmed this promise. In his message to Congress December 4, 1893, he not only urged "reduction in the present tariff charges on the necessaries of life" and "removal of restrictions upon the importation of the raw materials necessary to our manufactures," but declared that "only the necessity of revenue justifies the imposition of tariff duties."

This declaration was consistent, and the policy which it foreshadowed was entirely compatible with a proper increase in the revenue. A protective tariff is, indeed, by its very theory and nature less suitable for the procuring of a revenue than any other kind of tax. Whatever may be argued regarding the merits of protection, its purpose is exclusion of competing foreign goods; therefore, so far as such a law achieves its end, it necessarily strikes off a possible source of revenue. This is so obvious a principle that it needs no argument. But it did not follow, in 1893, that haphazard reduction of the duties, or even their scientific adjustment to the needs of the consumer, would bring the next year's customs revenue to a proper figure. Mr. Carlisle himself admitted frankly that the exact effect of lower import duties on the volume of importations "is of course impossible to foresee";[2] and the problem was further complicated, at the close of 1893, by the increasing after-panic trade depression.

The situation called, therefore, for the greatest possible

[1] December 31, 1893, the treasury held $80,891,600 surplus gold, $5,965,261 silver and $6,289,086 legal tenders: total available balance, $93,145,947.

[2] Annual Treasury Report for 1893, p. lxxxii.

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caution, for the most conservative judgment, in reckoning the probable yield of altered taxes. That the subject did not receive this calm expert examination and that, instead, the besetting sin of optimistic estimates governed the plans of cabinet and Congress alike, is without question the most just and the most serious adverse criticism which can be passed on the Cleveland treasury administration. There have been blundering estimates before and since: the predictions by the authors of the tariff act of 1890 are one instance, and we are witnessing in the present Dingley Law what is possibly the worst of all. But neither in 1890 nor in 1897 were conseqences of a wide misjudgment so certain to be serious as they were in 1893. Yet in his very first estimate, drawn up with material for prediction in his hands, Mr. Carlisle made such extraordinary blunders as to show that his basis of judgment was completely warped. "Conditions will be much more favorable hereafter," he wrote in December, 1893, "for the collection of an adequate revenue for the support of the government." "The worst effects of the recent financial disturbances and consequent business depression have been realized."[1] Therefore, the secretary "estimated a probable deficiency of $28,000,000 at the close of the [fiscal] year."[2] Now in the five months already elapsed in that fiscal year the revenue deficit had been $29,918,095;[3] the visible December deficit was $250,000 daily. The first six months of 1893, with import trade extremely heavy, had netted a deficit of $1,984,396;[4] the revenue law was still the same, and imports, towards the close of 1893, were decreasing thirty per cent from the year preceding; yet the secretary's December estimate actually reckoned on a surplus for the seven ensuing months of nearly two million dollars.

As a matter of fact, the fiscal year for which, with half its operations ended, Mr. Carlisle had estimated only $28,000,000 shortage, resulted in a deficit of $69,803,260. This rather glaring misjudgment had no special influence in itself, because Congress could not control the revenues of that period. But

[1] Annual Treasury Report for 1893, p. lxix.
[2] *Ibid.* [3] *Ibid.* [4] *Ibid.*, p. 26.

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the fatal optimism which underlay the blunder of December affected, in the end, every subsequent estimate, whether prepared by the treasury or by Congressional committees. The Wilson tariff bill, laid before Congress December 19, 1893, provided, aside from readjustment of the import duties, for increased internal taxes on spirits and tobacco and for a one-per-cent tax on incomes over $4,000. In his annual report of the same day Secretary Carlisle reckoned that these internal schedules would increase the annual revenue $50,000,000 over that for 1893.[1] Seven months later, with the schedules under consideration exactly what they were in the law as eventually passed, the Senate finance committee raised this estimate of increased internal revenue to $53,000,000.[2] Yet, in the outcome, annual internal revenue, which in 1893 had been $161,027,623,[3] was only $143,421,672.[4] Instead of increasing fifty millions over 1893, the returns decreased by more than seventeen millions—a difference of sixty-seven millions.

Now, it is true that the estimates, both of the treasury and of the finance committee, reckoned in the projected income tax, which the Supreme Court on May 20, 1895, declared unconstitutional and from which, therefore, no revenue was ever drawn. But the best expert authority, reasoning from experience of our own and other governments, had estimated $39,000,000 as the highest possible yield under the income tax, while concluding that the first year's yield could hardly run as high as $15,000,000.[5] Even assuming, therefore, that the income tax would, if confirmed, have brought at once the maximum of

[1] Annual Treasury Report for 1893, p. lxxxii.

[2] Report Senate Finance Committee, 1894 (No. 559), p. 323. This estimate was submitted in July, 1894.

[3] Annual Treasury Report for 1893, p. xxvii.

[4] Annual Treasury Report for 1895, p. xix.

[5] "My investigations lead me to conclude that the possible revenue under that income tax would range from $12,000,000 at the lowest point to $39,000,000 at the highest. I also conclude that in the first year of its operation the lowest rather than the highest possibility will be attained. In other words, I should fix the revenue for the first full year somewhere below $15,000,000."—Worthington C. Ford, Chief of Bureau of Statistics, in letter to Senator Hill, April 3, 1894. (Senate Misc. Document No. 232.)

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thirty-nine millions annually, the internal revenue estimate was some twenty-eight millions in excess of actual results.

Estimates on the customs revenue, under the pending bill, were almost equally astray. The Senate finance committee estimated from the import taxes, virtually as they passed that body, a yield of $179,251,142.[1] When half the fiscal year covered by this estimate was passed the treasury reduced the reckoning to $160,000,000.[2] In actual result the customs yield for the twelve months ending June 30, 1895, was only $152,158,617.[3]

To sum up, then: the official estimates on which the tariff and internal taxes were constructed — even after allowing $39,000,000 for the loss of the income tax — were $57,000,000 in excess of actual results for the ensuing fiscal year and nearly $30,000,000 in excess for the fiscal year 1896.[4] With this in mind, the failure of the law as a revenue-producing measure will not appear at all mysterious. That failure did not in any respect arise from the mutilation of the original tariff bill in Congress. There was, indeed, the usual display of selfishness and sectionalism, such as always attends deliberation on a tariff bill. In the Senate some of the proceedings were particularly scandalous. More than one protectionist senator borrowed the tactics of the free-silver obstructionists in the repeal debate of 1893, and inflicted on his colleagues, often through the medium of an unlucky clerk, volumes of inane and senseless twaddle, simply for dilatory purposes. These particular achieve-

[1] Report Senate Finance Committee, July 19, 1894. (Senate Report No. 559, p. 323.)

[2] Annual Treasury Report for 1894, p. xxix.

[3] Annual Treasury Report for 1895, p. xix.

[4] The estimates of July, 1894, and of December, 1894, compared with results, may be thus summed up:

	Fiscal Year 1895.		Fiscal Year 1896.	
	Estimate.	Actual.	Estimate.	Actual.
Customs . . .	$179,251,142	$152,158,617	$185,000,000	$160,021,751
Internal revenue	213,000,000	143,421,672	190,000,000	146,762,864
Total	$392,251,142	$295,580,289	$375,000,000	$306,784,615

Estimates for 1895 are those of the Senate committee; estimates for 1896, those of the treasury. (Annual Treasury Report for 1894, p. xxix.)

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ments were the work of opposition senators; but members of the majority made little better showing. The Democratic Party had in the Senate a clear majority committed on the tariff question. Yet every Senatorial alteration of the schedules of the House bill was made primarily in the interest of protected industries — notably in the Senate's iron, coal and sugar schedules, all of which openly violated the public pledges of the party. The session characteristically ended with the discovery that several senators, whose vote controlled Congressional action on the sugar duties, were speculating in Wall Street in the stock of the refining company chiefly interested. When the amended bill went to a conference committee, President Cleveland wrote a letter, which was read in Congress, criticising some of the Senate schedules as "outrageous discriminations and violations of principle";[1] and when the Senate measure finally prevailed intact, the president refused to put his name to it, leaving the bill to become a law without his signature.

The episode throughout was humiliating; but the sacrifice of principle in the Senate must not be allowed to disguise the fact that, from the simple point of view of a revenue-producing measure, the Senate bill was superior to the House bill. The Senate finance committee, estimating $179,251,142 revenue under their own customs provision, allowed a yield of only $124,657,429 to the measure as it passed the House.[2] This statement probably exaggerated the difference in productiveness between the two measures. Yet the sugar duties alone, which the House struck off entirely and which the Senate succeeded in restoring at the rate of forty per cent on raw sugar, with a still heavier and highly protective tax upon refined, yielded during the fiscal year 1895 no less a revenue than $15,354,290 and $29,808,140 in 1896.[3] Twice as much might have been

[1] Letter to W. L. Wilson, July 2, 1894. This letter also said: "You know how much I deprecated the incorporation in the proposed bill of the income tax feature." The letter's criticism of the Senate bill was specially directed against the Senate's action on iron ore and coal. Both were on the free list in the House bill; the Senate put on both a duty of forty cents per ton.

[2] Report of Senate Finance Committee, p. 323.

[3] United States Statistical Abstract for 1896, p. 285.

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secured had the duties existing prior to 1890 been restored.[1] The truth of the matter is that neither branch of Congress gave really serious weight to the question of a deficit. The House of Representatives devoted all its labors to relieving the consumer; the Senate, which succeeded in forcing the conference committee to adopt its schedules, was laboring to restore as much protection as it dared. The upshot of the season's revenue legislation was that, at a time when restoration of a surplus revenue was indispensable to preserve the credit of the treasury, a revenue law was framed which resulted, during its first year of operation, in a deficit of $42,805,223 and whose second year produced a shortage of $25,203,245. Whatever the excuse assigned for this failure to repair the mischief of the past, the fact remains that the party and its leaders had let slip one of those golden political opportunities which do not return.

Meantime, long before Congress had finished its deliberations over the revenue schedules, the treasury was approaching a serious crisis. I have already noticed the secretary's appeal, at the opening of Congress, for some distinct authority to avert impending bankruptcy. It will forever remain one of the most discreditable traditions of American legislation that in the face of the situation of 1894 Congress turned its back on the treasury. In the entire session one measure was introduced to authorize the issue of exchequer bills, one to permit the issue of three-per-cent bonds, and one to change the provisions of the act of 1875 regarding the character of the bonds.[2] These measures, which were the sole response to the secretary's appeal, were perfunctorily referred to committee, where they died; not one of them was even debated.[3] On the other hand,

[1] United States Statistical Abstract for 1896, p. 285. In 1887 the sugar duties yielded $56,885,915.

[2] See Index to Congressional Record, Fifty-third Congress, second session, p. 118. Regarding the last of these measures, its introducer, Senator Voorhees, indifferently remarked: "In one sense it is offered as a bill. It is a bill prepared and submitted to the committee on finance by the secretary of the treasury. It is not a bill introduced into this body and referred to that committee." (Congressional Record, January 16, 1894.) The bill was never heard of again.

[3] *Ibid.*

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seven bills were introduced to revoke the bond-issue clause of 1875, one to stop interest on such bonds as should be issued, and a number of resolutions, which were hotly debated, were proposed, declaring such sales unlawful.[1] That the free-silver coinage faction, exasperated by the president's victory in the repeal-bill struggle of 1893, should have resorted to such tactics is not perhaps surprising. But the cowardice of the conservative members in Congress, their silence when such propositions were debated, their shuffling attitude in and out of the capitol on this question of the public credit, present, in my judgment, the most disgraceful picture since Congress cringed in Pierce's administration before the Southern agitators. Indeed, the comparison is much to the advantage of the Thirty-fourth Congress; for in 1856 there were at least individual Congressmen to stand out for principle against an arrogant majority. In 1894 the agitators were left unanswered. Whatever wrong may have been done by public sentiment in other directions, history will record against it no mistake for its verdict of November, 1894, on the Forty-third Congress. The Democratic legislators had been allowed their opportunity; we have seen what use they made of it. The turning of the party's plurality of 96 in the House of Representatives into a Republican plurality of 144 was summary justice.

The secretary of the treasury had not yet at any time officially declared that in an emergency he would issue bonds under the treasury's existing powers; even the president, in his message of December 19, 1893, had made no such declaration. But by January 12, with the available silver and paper currency in the treasury at the low ebb of $15,599,614, with the gold reserve down to $74,108,149 and with an estimated deficit of $18,400,000 for the two first months of 1894, delay was no longer possible.[2] In an official communication to the

[1] See Index to Congressional Record, Fifty-third Congress, second session, p. 118. See also the debate on the Peffer resolution, Congressional Record, January 22, 1894.

[2] Letter of Secretary Carlisle to Senator Voorhees, chairman of the Senate finance committee, January 13, 1894. In this letter the secretary repudiated as follows the revenue estimate of his annual report published less than a month

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Senate finance committee, January 13, 1894, Mr. Carlisle, after expressing his disinclination to a bond issue under existing laws, announced that "unless authority" for more economical bond issues "is granted by Congress at a very early day, I shall feel constrained by a sense of public duty to exercise the power already conferred." [1] Congress again ignored the secretary's appeal; accordingly, on January 17, the treasury invited bids for $50,000,000 five-per-cent bonds, redeemable after ten years. Bids were to be opened February 1, 1894, and no bid at a lower rate than 117.223 was to be considered. A bitter and angry controversy in the Senate followed, in the course of which resolution and denunciation were hurled at the secretary by the free-silver-coinage Congressmen.[2] Not one speaker took the floor to defend the action of the secretary. The appeal to Congress was thus early proved to be a complete delusion; all that the friends of the administration succeeded in doing was to pigeon-hole the hostile resolutions.

The secretary's notice left two weeks in which to float the bonds. It was plainly his idea that the public would subscribe in numbers sufficient to cover the issue. People outside of Washington seemed to entertain the same belief; the newspapers were full of tales of financiers who called at Washington to assure subscriptions to the entire issue.[3] There was no truth whatever in these stories and no reason to expect such action. The Jay Cooke loans of 1863, which were "popular loans" and notably successful, were issued through expert canvassers, to whom a commission was paid by the government; the resumption loans of 1877 and 1879 were floated through banking syndicates. Mr. Carlisle resorted to neither device; he issued his circular and simply awaited results.

before: "When my annual report was prepared . . . it was hoped that no additional deficiency would occur; but the receipts and expenditures during the month of December and up to the 12th day of the present month show that the estimate of a deficiency of $28,000,000 at the close of the [fiscal] year was much too low."

[1] Letter to Senator Voorhees.

[2] Congressional Record of January 18, 22 and 23, 1894 — especially the speeches of Senators Peffer, Allen and Stewart.

[3] Press dispatches in the daily newspapers January 17 and January 18, 1894.

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It was soon evident that this policy was not well chosen. Bids came in very slowly; of the unsolicited subscriptions on which the secretary reckoned, there were less than $9,000,000 on hand when the bids were opened.[1] On Saturday, January 27, four days before the closing of the bids, the assistant secretary of the treasury, then in New York City, telegraphed to Mr. Carlisle at Washington that failure of the loan was threatening. The secretary then for the first time came to New York to present the matter personally to the banking community. Eventually, under extreme pressure, a syndicate of banks was organized in a hurry to subscribe for the issue.

Mr. Carlisle's reluctance to enter on personal negotiations with the bankers had its origin, obviously enough, in a wish to stand aloof from Wall Street. By deferring, however, to such an instinct, the secretary ran the risk of total failure of his enterprise, and placed himself in the attitude of a bargainer who refuses to bargain. The bonds were not in all respects an inviting field of investment. Times were hard; securities of all kinds were difficult to market; railway bonds of the highest grade were selling at prices where the net interest yield was four and five per cent.[2] Yet the minimum price announced by the secretary for the new 5-per-cents was equivalent to a three-per-cent bond at par.[3] This was asked for a ten-year bond at a time when the French government 3-per-cents, a perpetual issue, were selling at 97 and when the 2¾-per-cent consols of the British government — the safest security on any market — brought only 98¾. The outstanding four-per-cents of our own government, which had longer to run than the proposed new bonds, were selling at 113, a price which made them at least as cheap an investment as the proposed new 5s.

It is true that the recent immense redemptions of its own debt

[1] Boston thus subscribed for $5,362,550, Philadelphia for $731,500, Baltimore for $691,150, Cincinnati for $646,800, New Orleans for $7,000, St. Louis for $275,050, San Francisco for $110,000, Washington for $357,550, Chicago for $228,050, miscellaneous points for $205,200: total, $8,614,800.

[2] Thus Lake Shore Railway first mortgage 7-per-cents of 1900 sold in January, 1894, at 118; Chicago, Milwaukee and St. Paul R.R. first 7s of 1905, at 126½; Chicago and Northwestern R.R. first 7s of 1905, at 126½.

[3] Circular of January 17, 1894.

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at a premium favored high credit for the United States upon the markets. But against this factor must be placed the critical situation of the treasury in 1894, the knowledge of observant financiers that the revenue deficit would continue, the free-silver agitation and, still more important, the actual pendency of bills and resolutions in Congress to declare the entire projected issue of bonds unlawful. These facts, along with the depression in the markets, sufficiently explain the hesitation of financiers.

Such facts were not conclusive reason for the fixing of a lower issue price by the treasury; but they certainly suggested the need of business-like negotiation. Mr. Carlisle adhered to his policy of seclusion during the whole of the ensuing year; as a result, he was eventually forced in 1895 to appeal to a banking syndicate on the syndicate's own terms. When John Sherman was secretary of the treasury he came repeatedly to Wall Street and bargained personally with the bankers.[1] By so doing he of course incurred the obloquy of his political enemies; but, what was of infinitely greater importance, he succeeded in advancing the government's interests in the very direction where Mr. Carlisle subsequently failed. Congress made as determined an effort to block Mr. Sherman's bond negotiations as it did to upset the plans of Mr. Carlisle; the currency inflation sentiment was as rampant among voters in 1877 and 1878 as it was in 1894 and 1895. Yet the chapter of Secretary Sherman's resumption negotiations, when he pitted the London bankers of 1878 against the New York bank presidents and thereby placed his bonds at figures which the experts had declared unattainable,[2] is pretty safe testimony to the proper policy for a finance minister to pursue in his relations with the financiers.

When the subscriptions to the bonds, including the forty million odd subscribed by the New York bankers, were paid over, another embarrassment arose. The secretary's circular

[1] Specie Resumption and Refunding of the National Debt, pp. 291, 510, 665. (Annual Treasury Report for 1877, p. viii.)

[2] *Ibid.*, pp. 279, 281, 283, 294. See Recollections of John Sherman, II, 638.

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required payment in gold, and all of the $58,660,917 subscriptions were thus paid. But to make these payments $24,396,459 in legal tenders were presented to the treasury to be redeemed in gold, and the gold thus acquired was used for subscription to the loan.[1] I have never been able to see that this transaction was either fair or proper. That the subscribers had a legal right to obtain their gold in this way cannot be questioned, but a legal right is not always a moral right. It has been contended that since the redundant supply of legal tenders on the markets was a chief cause of trouble, legal tenders ought to have been welcomed in subscription to the bonds. But this was scarcely a question over which subscribers to the bonds had jurisdiction. If the secretary was willing to take legal tenders indirectly, it was for him to say so; but this was precisely what he did not say or intimate. The bonds, indeed, were issued under a law explicitly declaring that their purpose was "to enable the secretary of the treasury to prepare and provide for the redemption in this act authorized or required";[2] and the redemption thus referred to was redemption "in coin, of United States notes then outstanding."[3] But if bonds were to be sold explicitly to enable the treasury to redeem the notes in coin, it is surely a violent stretch of inference to contend that payment in legal tenders, even indirectly, would subserve the statutory purposes of the bond issue.

On the day when the loan was issued, February 1, the government's gold balance stood at $65,438,377; its total money holdings, exclusive of national bank notes and minor coin, were $77,969,993.[4] On the 6th of March the gold reserve reached $107,446,802, while the total cash surplus rose to $131,337,147.[5] Something had been accomplished. But then two adverse influences began to operate. First, the deficit in revenue increased. The excess of government expenditure in March, 1894, was $6,294,762; in April it was $9,380,472.

[1] Muhleman, Monetary Systems of the World, Appendix, p. 221.

[2] Laws of the United States, Forty-third Congress, second session, ch. xv, January 14, 1875. [3] *Ibid.*

[4] Daily reports, United States Treasury. See also Annual Treasury Report for 1894, pp. lxviii, lxix. [5] *Ibid.*

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Checked temporarily by the heavy customs payments in September — for sugar, particularly, on which the duty was about to be increased — the deficit rose to $13,573,800 in October; and by the close of that month the total treasury surplus of gold, silver and legal tenders had fallen to $100,259,042,[1] a decrease of thirty-one millions since the February loan was placed.

This renewed collapse of the general reserve was bad enough, but it was further emphasized by another very serious development. The narrow escape of the February loan from failure, and the evident disposition of Congress to block the administration's efforts, had spread alarm among foreign investors in American securities. They sold on our markets, during 1894, in quantities so enormous that the increasing merchandise trade balance in our favor was completely offset. American merchants and consumers were struggling honestly to get the better of the situation; merchandise exports exceeded imports during the twelve months ending June 30, 1894, by $237,145,950, which was a balance in our favor $185,000,000 greater than that of the same period a year before. But the remorseless liquidation of American securities reached a total far exceeding the merchandise export balance. Let it be kept in mind that European capital to the amount of many hundred millions had been invested in American stocks and bonds, in our banking and manufacturing enterprises and in our city discount markets, during the period of high credit following specie resumption.[2] Many of these investments were salable instantly on the markets. It was no unusual phenomenon, during 1894, for the New York Stock Exchange to witness in a single day sales of twenty or thirty thousand shares, traceable to the foreign bankers. Such liquidation, continued for one week, would at a low estimate bring upon the sterling

[1] Monthly treasury reports of revenue and expenditure; daily statement of balances.

[2] The estimate of A. S. Heidelbach is $2,400,000,000. (*Forum* for February, 1895; New York *Financial Chronicle*, April 6, 1895, p. 585.) Of course such an estimate must be based on very extensive guesses.

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market demand for foreign remittances of nine or ten million dollars, which is more than the weekly excess of our exports over imports in any month of 1894.[1] At the same time the crowding of timid and idle capital from depressed interior enterprise into the city discount markets displaced European capital already loaned. The revenue deficit, throwing back five millions every month upon the general currency supply, similarly choked the avenues of exchange into which, under normal circumstances, gold from abroad would have been attracted. It is a matter for small wonder, under such conditions, that the strain on the treasury's gold reserve continued.

At the end of October, 1894, as we have seen, the treasury's total available reserve had fallen again to $100,259,042 and its gold balance to $61,361,826.[2] This decrease in the gold fund came in spite of the fact that the reserve, in the secretary's words, had in the meantime been "replenished by voluntary exchanges of gold coin for United States notes by the banks."[3] The treasury did, in fact, get from the New York banks, during the summer months, some ten or fifteen millions of gold, virtually begged from them on the plea of patriotism[4] — an expedient as futile then as it was in 1893 and as it was destined again to be in 1895. In November came another loan of $50,000,000 ten-year five-per-cents, out of which the treasury realized $58,444,900.[5] The bulk of the subscribers repeated the expedient of February and recouped themselves by subsequent gold withdrawals from the treasury. This time the spectacle of the treasury depleted in the very process of repletion spread quick alarm throughout the entire financial community. Something much resembling the traditional run upon a bank began. In December, 1894, $31,907,221 legal-tender notes were presented for redemption in gold; in January, 1895, the redemptions rose

[1] The largest excess of merchandise exports in any month of the fiscal year 1894 was $43,626,862 (in December, 1893). Taking the excess for the fiscal year, the average weekly excess of exports was less than $5,000,000.

[2] Treasury daily reports of balances.

[3] Annual Treasury Report for 1894, p. lxix.

[4] New York *Financial Chronicle*, June 23, 1894.

[5] Muhleman, Monetary Systems, Appendix, p. 223.

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to $45,117,738; and of this two-months' total of $77,024,959 only $35,000,000 was withdrawn for export purposes.[1] By February, 1895, the gold reserve was down to $41,340,181; and with suspension of gold payments immediately impending, the famous contract with the Belmont-Morgan syndicate was closed, whereby the government, under an old act of 1862, bought with its bonds a little over $65,000,000 of gold.

This remarkable episode of 1895, with its unique provisional contract of the bankers to protect the treasury's gold reserve, I have previously treated in this magazine.[2] To that discussion I have nothing to add, except to repeat the conclusion that the operation, though technically a failure, did in reality save the government from suspension of gold payments. It gave domestic industry a chance to breathe again, and for a time stopped the mouths of the Congressional conspirators against the public credit. In the interval the nation seemed to regain its financial sanity.

Responsibility for the "bond contract" was individually accepted by President Cleveland, who declared to Congress ten months later that he had "never had the slightest misgiving concerning the wisdom or propriety of this arrangement," and that he was "quite willing to answer for his full share of responsibility for its promotion."[3] This very bold move, from which his own secretary would undoubtedly, left to himself, have shrunk, really marked the administration's final victory in its contest to maintain the gold standard and the public credit. It is not likely ever to be repeated, because only the critical nature of the emergency and the determination of Congress to block any measure of relief which did not lead to free silver coinage made such an operation necessary. It was not an expedient which an executive trained in the theory and

[1] Gross exports of domestic gold from the entire United States were $9,796,989 in December and $25,451,174 in January. The January exports went to pay for American securities, which London threw on the New York market in enormous quantities.

[2] "The Treasury Reserve and the Bond Syndicate," POLITICAL SCIENCE QUARTERLY for December, 1895, p. 573.

[3] Annual message to Congress, December 2, 1895.

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practice of finance would probably have adopted. Mr. Cleveland had not been thus trained; but he was apt, having made up his mind, to ride roughly over obstacles in the way of the achievement of a purpose. It was this habit of achieving ends regardless of political obstacles which stopped the "private pension" jobbery of Congress in the first Cleveland administration. The practice made enemies for the president then, and it made many more when applied to the financial question in the Fifty-third Congress. The flat-footed veto of the bill of March, 1894, which undertook to add $55,000,000 silver currency to an already inflated circulation, under the shallow pretext of "coining the seigniorage," was one such instance — a veto issued when hardly a public man of the administration party was facing the matter squarely. But the "bond contract" was undoubtedly the strongest example of the kind. By recourse to a most uncommon and unexpected procedure, the trap which had been laid with confidence for the administration's plans was broken down. That this sort of bold directness of purpose and method was not employed by the president in his financial expedients during the first and most critical year of his administration, was a misfortune which probably resulted, first, from belief that some honest support could be obtained from Congress and, second, from the fact that the rather timid political instinct of the secretary of the treasury was for the time allowed to guide. It must be remembered that, although the treasury has of recent years become wholly subordinate to the chief executive, the head of that department in the cabinet has under nearly all administrations been left to formulate methods, if not policies, in the government's dealing with finance.

The government bond operation of 1895, then, saved the public credit. It did little more. Prices advanced on the relaxation of the strain, and an outbreak of speculation in almost every market carried them much higher. But the apparent trade revival was built on a very artificial basis, and by autumn the weakness of the operation was disclosed. The undertaking to suppress and hold in check natural forces might

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have succeeded if the harvest conditions of 1879, of 1891 or of 1896 had been duplicated. But they were not. Our corn crop of the preceding season had been a disastrous failure; even the rise in wheat during 1895 was chiefly due to the partial destruction of our own winter wheat crop. Outflow of gold began again in August; the treasury reserve declined; the revenue was still deficient. The ominous cry for "voluntary reimbursement" by the banks began again, and again these institutions turned over some twenty millions of gold. But meantime fifteen to sixteen millions monthly were withdrawn from the treasury and exported — a movement which was utterly unseasonable and forced by reaction from the artificial exchange-market conditions earlier in the year. By the 5th of January, 1896, the treasury's gold reserve was down to $61,251,710. It was then that the treasury tried a third experiment in bond-issues by announcing, on January 6, 1896, a $100,000,000 four-per-cent loan, redeemable in 1925 and open to public bids without an "upset price." This loan succeeded — partly because of the open competition, partly because a month's notice was given, which enabled financial agencies to work effectively, but chiefly because the check to the movement of demoralization during 1895 had given strength and credit to the treasury. Some of the features of the loan subscription were absurd: thus, no deposit was required from bidders, a fact which brought a quantity of "straw bids" and speculative subscriptions from irresponsible parties. The use of the bond subscription made by some newspapers in search of vulgar notoriety was similarly grotesque.

But the loan was covered, nevertheless: on the books it was covered nearly six times over, and it was awarded at prices ranging from 110⅝ to 120.[1] Subscriptions to this loan so effectively contracted the redundant circulating medium that at one time gold exports had to be postponed through lack of legal tenders sufficient to obtain the gold. A week before the

[1] Proposals were 4600 in number, aggregating $568,269,850. The syndicate of 1895 made a bid for the whole issue at 110.6877, but $63,788,650 bids were made at higher rates. The total yield of the issue was $111,378,836. — Monetary Systems, p. 229.

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closing of the bids a premium of ⅝ of one per cent was bid in New York City for large blocks of gold coin or legal tenders.[1]

Of course the precedent of 1894 was followed, and prospective subscribers resorted to the treasury with legal tenders to obtain the gold in advance for their subscriptions. From $61,251,710, its total on the day when the secretary's bond-issue circular was announced, the treasury's gold reserve fell by the 8th of February to $44,563,493. This was a net decrease of $16,688,217, whereas gold exports within the period had been only $8,873,000.

Withdrawals from the treasury continued even after the bids were opened and awarded; postponement of the full subscription until June, by a supplementary treasury circular, made this operation somewhat easier. Meantime, also, gold exports began again. If the entire subscription to the loan had been paid in gold, without resort to the treasury reserve, and if no gold had been taken out for export, the government's net gold holdings, on the first of June, would have amounted to $155,942,329. As a matter of fact, the gold reserve touched its maximum on April 9, and this maximum was $128,291,327.

By August 30 it had fallen again to $100,957,561; but before it crossed the hundred-million mark again, the high domestic rate for money and the enormous grain export trade had turned the sterling market. Gold imports were resumed; the presidential campaign of 1896 ensued. For a time during October, when the issue of that fight between sound money and silver was in doubt, the treasury reserve again decreased rapidly. But with the victory of the sound-money candidates announced, imported gold again began to pour into the treasury. When such payments began in 1893, as we have seen, the treasury's available reserve, outside of gold, was little more than thirteen million dollars. At the close of August, 1896, the treasury's available surplus of legal-tender notes alone was $111,800,038. In addition to this, the deficit in revenue, which in the summer of 1893 was averaging six million dollars monthly, had been reduced in 1896 to a monthly average of less than three mil-

[1] New York *Evening Post*, January 25, 1896.

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lions. Such a comparison shows why the treasury was now able to increase its gold reserve through the application of gold importers to obtain, in exchange for gold, legal tenders for use in the autumn harvest trade, and why, therefore, the Cleveland administration, which received from its predecessor a treasury gold reserve of only $100,982,000 and a total available cash balance of only $132,485,000, turned over to its successor, on March 4, 1897, a total balance of $209,644,000, including $150,975,000 gold.

I have criticised impartially the actions and policy of Mr. Cleveland's second treasury administration and have pointed out such mistakes as it actually made. The salient fact remains that this administration preserved the public credit under conditions which made such preservation apparently no longer possible. It inherited a treasury fast approaching bankruptcy, with the revenue and currency governed by two of the most reckless laws ever placed on our statute books. It was confronted immediately with wreck of the country's commercial system, a situation needing the most prudent and public-spirited legislation. For such legislation the president had to appeal to a Congress in which a controlling influence was wielded by financial agitators and political jobbers, and in which the attitude of at least one branch was determined by personal feeling against the administration because it would not surrender offices to senatorial distribution. In the face of such odds as this, with the help only of laws conflicting in themselves and framed by makers of double-meaning compromises, the second Cleveland administration overthrew the most mischievous legislation of 1890, maintained the currency against depreciation and saved the treasury from bankruptcy. I do not believe that any ministry of our time, American or foreign, has fought its battle against such overwhelming difficulties. A ministry with a legislative majority behind it can procure at least a test of its own remedial measures; a ministry backed by the people can impose its will on legislatures. But the Cleveland administration, as a result of the inexorable law of politics which I noticed in opening this paper, lost its hold not only on Con-

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gress, but on the people. Yet with all this handicap, inheriting from its predecessor one of the most tangled financial problems in our history, it left a simple and easy task to its successor.

There is something singularly striking and melancholy in the beginning and the end of this second Cleveland administration. Its predecessor had encouraged and approved the laws which forced the treasury, later on, to the verge of bankruptcy. Had it been left two months in power after March 4, 1893, the Harrison administration would have been confronted with the full embarrassment under which the treasury was already sinking. Fortune, however, guided circumstances otherwise; the administration which had approved the laws through which the national finances were undermined left the structure to collapse on the shoulders of its successor. On the other hand, the administration which inherited this wreck and which, during four years of almost unprecedented struggle and vituperation, sustained the tottering public credit, retired from office at the very moment when an accident of nature had at length made successful achievement possible. If Mr. Harrison's term had continued until March 4, 1894, he would have surrendered office with the discredit of a treasury crippled through the undertakings of his own ministers, entered upon with his own express approval. If Mr. Cleveland's second term had run until March 4, 1898, he could not possibly have failed to obtain the political advantage accruing now to the present administration from the return of industrial prosperity. To such degree does chance sometimes sport with history.

The two chief misfortunes of the second Cleveland administration, apart from the industrial distress, were the blunders in revenue legislation and the failure of the currency reform propositions. For the first, as we have seen, the treasury was in some part responsible; for the second the administration deserves no blame whatever. Mr. Carlisle's official reports on the currency question have been equaled for soundness and cogency by no state papers since the reports of Secretary Hugh McCulloch in 1865 and 1866; and it will be remembered

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that Mr. McCulloch's plans for currency reconstruction were blocked by Congress as completely as were Mr. Carlisle's. But Mr. Sherman, who in 1866 was one of the bitterest critics of Mr. McCulloch's financial program, found himself borrowing the chief expedients of those very plans in 1875 and 1879. Similarly, the very political party which laughed at Secretary Carlisle's projects in 1894 has in 1897 proposed to go as far as it dares in exactly the same direction.

It is possible that the mistakes of routine policy into which Mr. Carlisle fell would have been avoided by some of his eminent predecessors. But, whatever his mistakes of policy or judgment, President Cleveland's secretary of the treasury made no such stupid blunders and pursued no such weathercock methods as Secretary Boutwell and Secretary Richardson did under very similar conditions in an earlier panic year. That Mr. Carlisle was unfitted by his training and prejudices for the peculiar responsibilities forced on him by circumstances will hardly be questioned in the light of the facts which I have submitted. And yet the test was unusually severe. Secretary Manning and his associates in the treasury applied their skill with singular success to unraveling a tangle in the currency; Secretary Fairchild's estimates of future revenue were phenomenally accurate; Secretary Sherman was one of the most adroit masters of financial negotiation who ever occupied the treasury. But Mr. Manning did not have to deal with $152,000,000 treasury notes, or with a deficit of sixty-nine millions; Mr. Fairchild based his estimates on the same general trade conditions as had governed the two or three preceding years; and it is possible that, with all his skillful bond negotiations, Mr. Sherman's resumption plans would have broken down but for the foreign crop failure of 1879 and this country's consequent command of foreign capital through its export grain.[1]

[1] Mr. Sherman himself half admitted this fact in a speech of October 27, 1879, at Cooper Institute, New York: "Now that resumption is a success, Democrats say the Republican Party did not bring it about, but that Providence has done it; that bountiful crops here and bad crops in Europe have been the cause of all the prosperity that has come since resumption. We gratefully acknowledge that Providence has been on the side of the Republican Party; or, rather, that, having sought to do right, we find ourselves supported by Divine Providence."

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Furthermore, it must be remembered that Mr. Cleveland's administration not only guarded the public credit through a period when it seemed no longer possible to protect it, but fixed the maintenance of the gold standard so positively as the administrative policy of this nation that no one except a political agitator is likely hereafter to assail it. The Harrison administration left this vital question of public policy, as it left most other critical questions of finance, in absolute uncertainty; the issue was so plainly defined by Mr. Cleveland, in the face of a Congress which sought out every expedient to cripple him, that in the campaign of 1896 a presidential candidate of the opposite party, with an exceedingly doubtful record on the money question, was forced to take the stump personally in behalf of the very principle maintained by the Cleveland administration. I know of no other way in which the policy and achievements of an administration could be more completely vindicated.

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THE SCHOLAR'S POLITICAL OPPORTUNITY.[1]

A feature of recent presidential elections has been a distrust of the educated class. It is the day of the plain people; and a claim to superior knowledge often injures a man's chance of gaining a hearing. It may seem, then, that this attitude of the public makes the scholar in politics a superfluity. What I hope to show, however, is that it creates a demand for scholarship of a high order, and that it offers to scholarship of this superior grade a larger field of influence than has ever before been open to it. The uprising of the plain people is the opportunity of the true scholar.

The knowledge that is to be a political power is not, indeed, of a kind so advanced that it cannot be imparted to the public. As there can be no esoteric politics, no knowledge that is worth anything in politics can bear a label of exclusiveness. Government is by the people. There should be a certain communism in the holding of intellectual property that is needed for public uses. Yet knowledge that is not at present common property must in some way make itself effective in the politics of the future. If it comes in the form of clear demonstrations it will be welcomed. The great democratic power that rules the state — except when bosses rule it and the state — is still ready to welcome one thing from any one who may offer it, namely, light. It knows its own interests and is glad to learn how to promote them. If any man is able to reveal the occult forces that, when they are understood, make for prosperity, he has something to offer that is as welcome as are compass and chart to a navigator. To the man who really grasps principles and understands what to the multitude are, as yet, mysteries, there is now open a larger field for political influence than any historical situation known to me has offered.

[1] An address delivered at the celebration of the fiftieth anniversary of the founding of a chapter of the Delta Kappa Epsilon Fraternity at Amherst College.

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The political system is taking its color from the industrial. The contests of the factory and the shop are more and more often fought over again in the larger field of party warfare. There are facts about our industrial system, some of which have recently been discovered, that will take some of the bitterness out of such contests. These are accessible to the men of the school and they are important to the men of the shop. I wish to point out a few of these things that genuine scholarship now sees, and that it can enable any one to see, if he will fairly examine the proofs.

The first fact that needs to be known is all-comprehensive. It is nothing less than the truth as to whether the present industrial system is worth keeping. Is the competitive system of creating and distributing wealth legitimate? Does it promise much for the future? One is startled by the assertion that so general a question has become a political issue; and yet it has become so. Socialism is no longer a mere speculation: it has emerged from the study in the shape of certain concrete and radical demands. Behind these are powerful bodies. We are asked to take industries, one after another, into the hands of the state, till, in the end, the government shall be the only employer of labor. Deep in the hearts of the men who make these daring and revolutionary demands is a conviction that the competitive system of industry is at bottom bad. From this theoretical view a whole genus of political movements takes character. It is the people as a whole who must meet the practical issue that this theory involves. Shall we strengthen the industrial system or shall we weaken it? Shall we keep it forever and let it evolve after its own nature, or shall we sweep it away and substitute a different system? It is the people who have to decide. The fundamental character of the social system is in debate, and the policy of nations is to be determined by the verdict that the common people will render on this subject.

Concerning the social system there are three views, any one of which a reasonable being may hold. That society is all that it ought to be, is not one of the three. That it

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is tolerable, and is very good when it is let wholly alone, is one of them. This is the extreme *laissez-faire* position. Again, that society is wholly bad is not a possible view. That its fundamental tendencies are evil, however, is possible, and is the opinion held by socialists. The system, they say, has incidental features that are good; but the forces that at bottom control it are making it worse and worse. The great abuse alleged is the systematic plundering of laborers. Competition, it is said, causes this; and so long as competition continues, the plundering cannot be stopped.

Finally, it may be held that society, while full of evils, is fundamentally sound. The forces that at bottom dominate it, one may say, are working rightly. They work against the evils of the system and will steadily reduce them. Ultimately they will redeem the social state if we only secure for them a free field. This is a view the grounds of which I wish to indicate.

The first and second of the views that I have stated preclude much effort at reform. They make society, in the one case, so good that it does not particularly need to be reformed; and, in the other case, so bad that there is no use in trying to reform it. The third of the views that I have cited — the one that I regard as the true one — makes every man a reformer. It gauges his moral quality by the amount of energy that he is willing to spend in trying to remove evils; but it gauges his intellectual quality by the intelligence that he uses in the operation. If the social state is at bottom sound, there is something to be done for it. There are things to be cast out and things to be rescued. What, as I claim, educated men may know and ought to teach, is that society is fundamentally sound and therefore worth reforming. This first article of faith for an active citizen is not to be proved without intelligent thinking. Educated men need, further, to know and to teach how to reform it. Socialism is fascinating and dangerous because it promises, not to reform, but to regenerate society, and to do it in a cheap and rapid way. It has the advantage of telling us just how this is all to be done, namely, by letting the state become the sole employer of labor.

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Almost any movement is strong if it proposes a definite remedy for public evils. "We intend to tax land up to its full rental value," says one party. If you object, there comes the quick retort: "What do you propose?" If you say "Nothing," you are lost. "We intend to debase the currency," says another party. If you say: "That will rob creditors, paralyze credit and drive gold into holes in the earth," the rejoinder is: "What is your remedy? We must do something." "I think," says the old-time doctor, "that your liver is out of order. I will bleed you and give you calomel." "But," protests the patient, "that will derange my system and make me weaker." "Have you, then, a remedy to suggest?" demands the doctor. "Alas, nothing but the curative forces of nature." In such a case pill and lancet carry the day. Similar results follow on a large scale when some men have violent cures for social diseases, and we suggest no alternative except waiting and depending on nature. *And yet nature is all-powerful.* There is no cure of disease, individual or social, that does not come through the action of her forces. Sick men are slowly learning to depend on them. Society has the same lesson to learn.

Particularly is the power of positive demands noticeable when what is proposed is the putting of all industries into the hands of the state. No other plan can possibly promise as much for the immediate future as does this one, and nothing can appeal with so much of positive force to working people. The violence of this remedy does indeed prevent us from adopting it; it is much as if what the doctor proposed were to take out the patient's heart and liver and to put them back again in reversed positions. We are deterred by the risks of the operation, yet the itching to do something is irresistible. The world doctor of the quack species, with his bold diagnosis and his promise of a cheap and rapid cure, is the fascinating and dangerous man. For trained thought there is, as the first difficult task, the detecting and the pointing out of the socially curative forces of nature — of the tendency of a society, as well as of a man, to get well if the laws of the system be

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allowed to work. The task does not, indeed, end with this. There are positive things to be done in the way of reform. The socialist has no monopoly of definite proposals. The evils of the world may be understood, forces that pervert nature may be detected and repressed, and prosperity may be secured — though not in any cheap and instantaneous way.

Before speaking of these specific reforms, however, I wish to name a few more things that need to be generally known about the existing system of industrial society. This system is founded on competition, and its nature is to make the world as a whole rich. It has given to the American people what averages a thousand dollars apiece for men, women and children. Competition is called a war, but it is a rivalry in serving the public : that business man survives who can serve society best. If a man offers goods cheaper than others — if he is what we call a sharp competitor, what he is really doing is to give to people, in return for a given service on their part, more than others are offering. He outdoes his rivals in conferring benefits. If one's point of view is that of a business man contending for his position and having rivals who are trying to get away his trade, he may regard competition as a warfare. He may say that his rivals are trying to destroy him, and that self-defense compels him to try to destroy them. But how can he do it? Only by offering the utmost that it is possible for him to offer to the public. He must give all the goods that he can give for the money. Economics does not study the moral quality of the motive that is back of competition. Self-interest may set it working ; but what it does to the public is beneficent — and that we all need to know. If the world shall ever become an economic New Jerusalem, a city of literal gold, it must come about in this way. More and more perfect becomes the machinery that competition employs to gain its ends. It multiplies a hundredfold the product of labor. More and more automatic grow the engines; and more rapid, accurate and strong becomes the work of the tool. Touch the electric button and the machine shall work wonders for you ; and this effect is all traceable to that system of industry which enlists

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every business man in a breathless race to outdo his rivals in serving the rest of the world.

The benefits of these services are, however, distributed unequally. What if they are apportioned unjustly? We have rich and poor; and it is said that these classes consist of plunderers and the plundered.

The first question here is not whether robbery exists, but whether it is due to competition. If the competitive process tends to stop it, our course is clear: we should make way for the forces of nature — let competition go on. This is one of the points at which a modern type of economic science can render a large service to humanity. It can meet, as an earlier science was unable to meet, the charge that the society in which we live is based on a principle of robbery. It has not always been possible to show how much labor can claim by right of creation; and the charge that the laborer creates all wealth, and that the capitalist filches away a part of it, has not been adequately met.

There is always a definite amount that labor can claim as its own separate product. The man creates something and the machine creates something. If we could see it, these amounts are definite. Labor owns a distinct fraction of the output of industry. It may, however, seem very difficult to decide what proportion of a product is due to labor alone. Send a man fishing with a canoe and fishing tackle owned by another man, and there is clearly a divided ownership in the catch. The fisherman owns a part of it and the capitalist — the owner of the canoe and the fishing tackle — owns the remainder. The part owned is in each case the part produced. But how much does the man alone produce, and how much do the canoe and tackle produce? Bring the fish to the shore and put them into two piles. Can you say of one, "This was caught by a man without canoe and tackle," and of the other, "This was caught by a canoe and tackle without a fisherman?" Every fish is in reality a joint product: every fin or scale of a fish is such. What this means in the business world is that down to the finest tissues in the products of social industry there is

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joint production. Every thread in a piece of cloth and every peg in a shoe owes its existence to labor and capital acting together : neither of them creates anything without the other.

There is a definite part of the product of industry, I have said, that is distinctly imputable to labor. With a little more time at my disposal, I could make an effort to prove this proposition, and to show, further, that the tendency of competition is to give to labor the share of the products that it creates. This is a momentous proposition, but modern political economy is able to prove it. If competition has its way, the men who run the machinery of the future will get their natural share of the goods that will result from the process. I do not say that they will, in fact, always get them ; but that is because competition does not work without obstructions. What we do know is that, if they fail to get them, it is because competition sometimes fails to do its work. Upon the obstacles in the way of competition, not upon competition, are we prepared to charge the dishonesty that attends modern industry. We are working according to a system that is at bottom fair in its dealings.

The indictment against society is, however, not yet fully met. What if, even with perfect honesty, it deals hardly with the working man ? It may give him what he creates and still give him little, because it only permits him to create a little : it may restrict his opportunities. Keeping still in mind what competition tends to do, we say that the system is widening the opportunities of labor. The workman's share of gains, being an honest share, tends to become larger. The amount of wealth imputable to mere labor tends to increase ; and with this increase there is a basis for an increase in wages.

What an employer can pay is limited in the long run by what he can gain by the workman's presence. Not for a long time is it possible for him to give to a laborer more than the laborer gives to him. The question of rising wages is a question of increasing productive power on the worker's part. Competition is putting the workers of the world into more and more fertile fields for labor. Fertility means not only that the

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whole crop is large, but also that the part which is imputed to a working man is large, and that the man's wages increase correspondingly. The industrial world, with its whole equipment of farms and mills and shops and railroads and ships and canals and stocks of goods, is like a field which men till for a living. If this whole environment is rich and fertile, mere labor will signify much and get much. When competition adds shop to shop and machine to machine, it is multiplying the wage-paying power of society and making society pay laborers according to its new power.

There is a final count in the indictment against the social state. At best, it is said, its tendencies are undemocratic. Here is seemingly one point to be surrendered; for nothing if not plutocratic is the business world. It has its captains of industry — and they are captains indeed, for they command their followers in the most autocratic way. They have a power over them which no governmental official could possibly have. Their millions of dollars are growing toward the limit of billions: the gulf between the extremes of society is widening.

Is even that true? In a sense the world is plutocratic, and I believe that it will be so to the end of time; but in a finer sense it is democratic. If every man's possessions, small and great alike, were to be multiplied by ten, there would be less to choose between the status of a worker and that of a multimillionaire than there is to-day. Not in mere possessions, but in the well-being that comes from possessions, such a multiplying of the means of production would have a leveling effect. As capital increases, wages rise. A Vanderbilt cannot have a thousand millions instead of a hundred, unless the country gets more and better railroads and more goods for the railroads to carry. An Astor cannot become a billionaire unless cities have more and better buildings. A Stewart or a Wanamaker cannot do it unless the buildings contain more and richer merchandise. All this means a more fruitful world for the workman to labor in. It means that he will produce a larger wage and get it. If he does get it, he will be the chief beneficiary of progress. He will never catch up with the billionaire

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in possessions, but in the good time coming he may go far toward catching up with him in genuine well-being. Though he ever remain a mere wage earner, dependent on his toil, he may find that he gains on the rich man in the race for the actual enjoyments of life. The gulf between the richest and the poorest may in reality become a small one when the richest is a billionaire.

I was once passing a summer on Somes' Sound, at Mt. Desert ; and for recreation I hired a rowboat, fitted it with a sprit sail, and, with members of my family, voyaged from point to point on the island. One day there passed us a steam yacht that looked like an Atlantic liner for stateliness. There were fifty men sailing it and about five enjoying it. The latter was the number of passengers in my own little craft. As the proud steamer passed us it looked disdainful ; but it woke the echoes from the cliffs with its beautiful gong whistle, and it could not prevent us from enjoying them. I reflected with pleasure that I had not the coal bill to pay ; and I further reflected that there was little to choose, for real pleasure, between the condition of the party in the yacht and that of the one in my boat. Out of the breeze, the dancing water, the sunshine, the scenery, the echoes and the social pleasure that made up the total enjoyment of that summer's day, my own share was as great as the multi-millionaire's. If I had had no boat at all, the case would have been very different. I saw persons on the shore with no means of sailing, and I pitied them indeed. Between their state and mine there was a gulf ; between my state and that of the money prince there was no gulf worth mentioning.

Now, it is well within reason to hope that the worker of the future may reach the rowboat-and-sprit-sail level. At present he has no boat and may well envy the man who has one. But if he gets a modest craft, he will not need to envy the man with a steam yacht. The man with an assured and comfortable living is not greatly below the status of the man of uncounted wealth. "The abundance of the rich will not suffer him to sleep," says the Bible. We may look with equanimity on the

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accumulating billions of the future. What their owners will get out of them is care. What we cannot help getting out of them is comfort and well-being. No possible condition can so far excel that of a workman of the future on four dollars a day as that condition will excel the present state of a man on two dollars. If the goods that a workman can enjoy be the test of wages, it is not beyond reason to expect them to be doubled and even quadrupled within a century or two.

It strains no one's credulity to claim great things for the effects of invention and discovery. What may not mechanical forces do? Old earth is still a sleeping giant. He has done some things for us: he has given us water power, steam and the crude first uses of electricity; but all this is as nothing to what he can give. He has, as it were, lifted one drowsy finger to serve us. Fully wake him and your wildest imagination cannot take in the things that will happen. The waves that beat on the shores shall one day move our engines. The very turning of the earth on its axis shall give electrical energy, and nerves of copper shall carry that energy whither we will. It will be much as if the revolving earth were itself a driving wheel moving the smaller wheels of industry. The new machines will be embodiments of intelligence, and will become more and more automatic. Touch then the electrical buttons, and forms of utility and beauty will spring out of non-existence in Oriental profusion. They will fill the humbler homes of the world. Palaces will be built, of course, and the passers in the streets will get the benefit of them. Parks and pleasure grounds will multiply, and electric cars will take any one to them for a penny. All the world will travel. A journey around the earth will not count as a long one. Sojourning among the mountains or by the sea will not rate as a rare luxury. We shall democratize the finest pleasures. Withal we shall democratize culture. The school will keep its pupils till they reach maturity. Art and music will be at their command. With such things for enjoyment, the pupils will have the capacity to enjoy them. As recurring summers shall take us over the sea to strange and historic scenes, the traveling

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will do for every one what it now does only for the *élite* and appreciative.

Pull down, then, the barns and build larger, capitalists of the twentieth century! Add mill to mill, railroad to railroad, bank to bank, ship to ship. Your billions will do something for you; but they will do more for us — the democracy of the future. But pause! between us and all that is written one tremendous *if*. *If* only natural law works, *if* the world develops after its kind and unperverted, *if* forces of evil and of ignorance do not blight the prospect — then these things will happen. Here lies a second practical work that the state demands from scholarship; and the task is big enough to tax its full power. As a first service, scholars are to know and to make known the good forces and tendencies of our social system; as a second, they are to point out and help to remove obstructions, and so to let nature work.

This is not saying that we are to create prosperity by act of Congress. *Fiat* prosperity is elusive indeed. Hard times and good times must long alternate like the seasons; and an administration can create what is called a business boom only as Columbus created an eclipse of the sun — by waiting for it to occur and then claiming the credit of it. It is dangerous to suggest that anything that will quickly usher in a prosperous season can be done by the government. If what we refer to is the slow and sure improvement that is made, as one decade with its alternations of business conditions follows another, there is something to be done. Not a quick turning of hard times into good ones, but the making possible and real of the more general improvement that extends through a century — this great work is within human power.

We may enable competition to do its work and to lift humanity, not as quickly as though a mountain range were tossed into the air, nor yet as slowly as a mountain range actually rises by geological causes, but rapidly enough to inspire all who see and understand the process. Natural economic law must have its way, if it is to do this work. It is now interfered with. The task of the state is to stop these interferences.

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Positive reform is a new and higher type of *laissez-faire*, for it is compelling powers of evil to let beneficent nature alone. "Hands off from competition in industry," is the word. Hinder not the grand dynamics of nature, but lay hands on whatever perverse agent may now presume to offer hindrances. The work is not simple; for it is not obvious what is natural and what is not. It is hard to see what task can be imposed on human thought which is more important than that of making a clear separation of what is natural from what is unnatural in organized life.

We have, for instance, a trust problem to solve. This can be accomplished only by the finest discriminations. A blind rush at the supposed enemy will not do it. Shall we simply say that the whole principle of combination is abnormal? Shall we bid our citizens to charge at a trust, wherever they see one, like a herd of bulls at a red cloth? That would be using the amount of intellect that a bull uses. The problem calls for the most careful thinking. There is that in the trust which is good, and there is evil also. The difficulty is to separate them and to secure the good only. It is not easy, but with enlightened thought it is possible. We have also a railroad problem to solve, and we can solve it only in the same discriminating way. Zeal must be according to knowledge. All of the power to make cheap rates and to give good service that comes through combination must be left. The power to cripple some industries and to build up others — to show favoritism and to play into the hands of monopoly — must be taken away. This is a hard task; but it is within the power of men who think.

Again, we have to meet a many-sided labor question which is changing its shape under our eyes with much rapidity. Trade unions for fixing wages are the salvation of labor. On no account should we repress them: we should aim rather to extend them. Yet a perfectly free hand to do whatever unlawful things their interests or wishes may here or there dictate, the state cannot possibly leave to them. What shall be allowed and encouraged? What shall be prohibited? If we make prohibitions, how shall we enforce them? This task will tax the

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utmost sagacity of statesmanship. Optimism says the issue can be successfully met, because it must be met if society is to survive. Scholarship confirms the opinion, but it does not belittle the difficulties in the way of successfully solving this problem.

There are factory laws to be made and enforced. Working in the mills that supply us with goods there are helpless classes to be protected. A guardianship over women and children has been assumed by the state, and it must be exercised with great wisdom. There are the ever-recurring problems of taxation, and they become more serious and baffling as personal property becomes greater. Bad taxation is a perpetual incentive to communism. Of inheritance taxes we shall hear more than we have yet heard. I do not say they are necessarily bad; but it is clear, without saying, that they are capable of going to lengths that would mean disaster. You can always confiscate a property if you tax it at a high enough rate. Here there is a line to be drawn with difficulty between good and evil. We are starting on a course the farther stretches of which are perilous, and we must call a halt when impulse would carry us farther.

We have a general corporation problem to solve. This stands first in the order of time. The thing to be done is not merely to protect the public from the corporation as a whole: it is to protect the owners from the managers. "Director" must not be a tainted word: it must not even suggest a subtle and modern form of iniquity. Not till the stock of a railroad is a good investment for a workman's savings — and that is some time in the future — will society be all that it should be. Can we make stockholders safe? Not by mere reformatory zeal; possibly we can do it through zeal and knowledge.

Is this not enough? The things that I have enumerated are not all. More and yet more will the state demand of the men who are trained to look below the surface. There must be many such men. Schools must everywhere do their best to furnish them.

We are misled by the success with which we do things that

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chiefly demand crude strength. "A nation that can put down the rebellion can settle a question of currency," said a statesman. If strength or even patriotism were all that such a problem requires, our sixty-six millions of people would find the task light. There is energy enough available when an evil really threatens us and force alone can avert it. Call for a fighting body to repel an invasion, and you will get a million men in a day; but generalship may be lacking. Call for a following of voters to repel a perfectly obvious and dangerous attack on the state, and you will get the men; but the statesmanship that would tell them just what to do may be wanting as before. In either of these cases they will

> Come as the winds come when forests are rended;
> Come as the waves come when navies are stranded;

but if the way be not clear, — if the nature of the evil and the mode of removing it be doubtful, — impulsive patriotism may be about as destructive as winds and waves. As against the evils that are growing up in the modern state, humanity appeals to the school. As against impulsive and blind reforms that try to attack the evils, but would actually rend the state in the effort to save it, humanity appeals also to the school. Before men who can see there is a vision of the future that nature, if she had her way, would give to us. It is bright beyond the pictures that socialism presents. It is assured by the forces of evolution that have made society what it is — *if* only we will let them work. Shall the vision become reality? The insight that makes this possible is the gift of scholarship to the people.

JOHN BATES CLARK.

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THE SILVER SITUATION IN INDIA.

SILVER has never, so far as I am aware, been mined in India. This, of course, has not been the case with gold: southern India, which is now contributing over £1,500,000 to the yearly production of the world, was in prehistoric times undoubtedly the scene of very active mining. Under these circumstances it is not surprising that at one time, before commercial communication with India was easy and secure, silver was held in greater esteem than gold in the East. Even up to the middle of the last century it was rated more highly, as compared with gold, in Eastern markets than elsewhere. Such a state of things could not, however, continue; for from the early days of Venetian activity in trade Europe has been pouring silver into India, and from the time of the Mogul Empire this metal has been in effect the standard of Indian currency.

After a few spasmodic attempts, made about one hundred years ago, to introduce gold again into the monetary system of northern India, the various silver currencies were unified and the present rupee introduced in 1835. In the early sixties the modern commercial history of India may be said to commence. The suppression of the Sepoy revolt in 1857 gave security to British rule. The era of railway building began, and a large and systematic expenditure upon roads and communications was inaugurated. Even more important in its effects upon India's industrial development was the Civil War in the United States. Cotton being no longer procurable in the quantities needed, India was called upon to meet the demand and at once responded. The trade of Bombay doubled in five years. Times became good and prices rose. The usual result of over-trading followed, and the panic of 1866 worked widespread disaster. Yet the impulse given to India's export trade can hardly be over-estimated, and the effect remained when confidence was restored. When excitement was at its highest and loans were practically unattainable

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at market rates of ten and fifteen per cent, the government, at the instance of the trading classes, attempted to give relief by offering to receive gold in payments at its treasuries. The experiment was, however, unsuccessful, for the reason that gold was over-valued in the notification. The finance minister of the time, Mr. Wilson, an orthodox though somewhat narrow-minded economist, declined to grapple with the difficulty, and contented himself with the establishment of our present system of paper currency. Up to this point all attempts to introduce gold were made with the idea of easing prices by increasing the media of circulation. Gold was sought for its cheapness, not for its scarcity.

In the next decade the conditions were entirely changed. Silver, in the course of expulsion from the currencies of the West, poured into India in an ever-broadening stream, and new financial troubles began. In twenty years the rate of exchange fell from 1*s.* 11½*d.* to 1*s.* 3*d.*, and the burden of the gold debt of India became oppressive. Each finance minister found it increasingly difficult to maintain an equilibrium. Merchants realized that a turn in the exchange was enough to convert a carefully calculated profit into a loss. Government officials — always an important body in a tropical country where Europeans are few — became discontented, finding that they could no longer remit sufficient to maintain their wives and children in the manner customary in their station of life. In 1892 the outlook became peculiarly threatening. Austria was found to be formulating a scheme for a gold currency, Russia was absorbing gold to rehabilitate the paper rouble, France and Germany seemed bent on accumulating huge war-chests, and America appeared to be on the verge of suspending her monthly purchases. The need for decided action was pressing, and the opportunity for taking it was ripe. The momentum necessary for the change was supplied by public, commercial and official opinion; and in 1893 the government decided to defend itself by closing the Indian mints to silver.

In connection with this step two questions naturally suggest themselves. First, what were the objective of the Indian

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government and the methods taken to secure success? Second, what is likely to be the outcome? Unquestionably the aim of the government was the attainment of a gold standard — not necessarily because the members of that government were agreed that that was the best or the final solution of India's currency difficulties, but because it seemed the one easiest of attainment under the conditions then prevailing. Opinions were divided about the desirability of declaring any par as the goal aimed at; but the secretary of state was of opinion that, just as the bullion value of the rupee afforded a minimum limit to its value, so the declaration of the par of 1*s.* 4*d.* would afford a maximum. A certain section of the Indian government and an independent but uninformed body called the Indian Currency Association (which took a large part in educating public opinion and in advocating the change) held the unsound view that the rupee would rise at once to the par which it was desired to reach. The market inclined to the same view, and in consequence the rupee rose from 1*s.* 2½*d.* to 1*s.* 4*d.* on the passage of the act. It was soon seen, however, that Sir David Barbour and the more instructed of the India council in England were right, and that the process of appreciating the rupee must be slow. Though the rate of exchange was 1*s.* 4*d.*, the secretary of state at once found that he could not sell at that rate the drafts by which India's yearly gold liabilities of seventeen millions sterling are met. The ignorant party thereupon asseverated that, if he held out, the market must buy; and he gave way, desiring to allow the Indian government a free hand and thinking that this policy was approved by the Indian minister of finance. Events soon showed the unsoundness of the quaint idea that a government can pay its debts by selling drafts at a valuation fixed by itself, and the secretary of state resumed the usual weekly sales. The catastrophe was naturally the worse for the delay; and the rupee, having remained at an artificial level, fell to a lower point than it would probably have reached had drafts been sold consistently from the first at market rates. Not content with the evident proof of their failure to realize the position, the same

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party, both within and without the government, changed their vote, declaring that the competition of silver with the council drafts was at the bottom of all the mischief and clamoring for an import duty. Fortunately their entreaties were not heeded, and the government has ever since steadily adhered to the policy of inaction, waiting for the rupee to rise by contraction of supply. The final objective of the government, however, has not been declared : in fact, it has never been settled. If the rupee rose to-morrow above 1*s.* 4*d.*, the sovereign would undoubtedly enter our treasuries; but no steps have been taken to secure its retention or the maintenance of this par.

It remains to discuss the chances of success presented by this experiment. Long and very laborious researches during the last seven years have led to the conclusion that the number of rupees circulating in India has been remarkably constant, and may for the ten years preceding 1886 be put down at about 120 crores. From 1886 to 1893 the circulation was, in my opinion, slightly expanding; and at the time the mints were closed it was perhaps nearer 130 crores. The average yearly coinage during the decade when the circulation was approximately constant was seven crores, and during the next few years, in which the circulation rose by ten crores, the average yearly coinage was nine crores. A consideration of these figures would lead a hasty observer to conclude that on the closure of the mints the circulation would shrink by about eight crores yearly. Such a conclusion, however, would be highly erroneous. The industrial demand for silver has hitherto fallen almost entirely upon the rupee, as is evidenced by the fact that nearly the entire import of silver used to pass through our mints. This state of things must clearly be ultimately arrested by a measure which tends to enhance the value of the rupee by contraction.

It is, indeed, probable that at first rupees continued, and will for some time to a diminishing degree continue, to be melted by the peasants for conversion into ornaments. Upon this point the ignorance of even the cultivated native is extraordinary. A friend of mine, a rajah of good education and intel-

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Diagram showing the course of exchange in India and the fluctuation

NOTE.

This chart is adapted from another furnished by the director-general of statistics in India.

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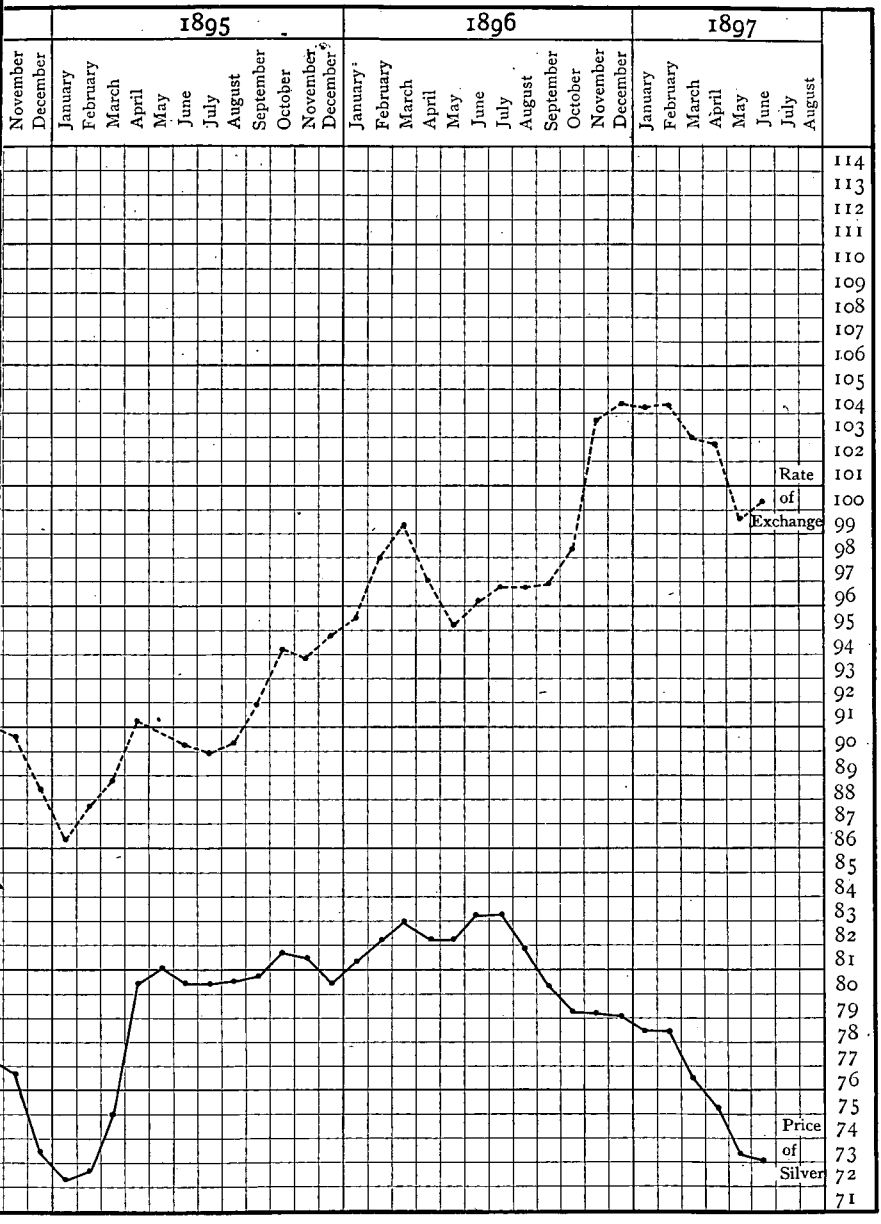
s in the price of silver in London from January, 1892, to June, 1897.



NOTE.

The data of the chart are:
Price of silver on 1st June, 1893, 37¾d. per ounce.
Rate of exchange on 1st June, 1893 (Calcutta demand), 1s. 2⅝d. per rupee.
Each of these has been taken to represent 100, and the curves of the diagram show the fluctuations in monthly averages on this basis.

Loan of four crores advertised on the 22d July.

Loan of three crores announced on the 19th July.

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ligence, told me a few months ago that he was quite unaware of the fact that the rupee was worth some eighteen per cent more than its weight in silver. Still, though the purchaser may be ignorant and may as of old give his rupees to be melted, it is not likely that many silversmiths will continue to use them when they can buy bullion.

The effect upon hoarded coin cannot be so easily disposed of. Many thought (and among them were Sir David Barbour and myself) that on the whole the closure would not bring out hoarded rupees, and that the tendency would rather be to hoard further a coin of rising value. Others argued that holders of hoarded rupees would bring them out either to realize a profit by exchanging them for silver or to take advantage of the higher value of the rupee, the permanence of which they would distrust. In reality, it seems probable, judging from the facts — so far as they can be deduced from examining the composition of the circulation — that at first hoarded rupees did, on balance and in small amounts, reënter the circulation. This movement was no doubt stimulated by those who bought silver in large quantities after the closure, and has, I think, now ceased, although the present famine must be to some extent calling out coin that has been stored against bad times.

Matters are, however, now settling down. In spite of the famine, I believe that last year the circulation commenced to contract and that hereafter the progress in this direction will be steady. I do not for a moment mean to say that the yearly loss is anything like eight crores; but that on balance rupees are now being hoarded and are still to some extent melted; and that these causes, coupled with losses due to natural causes, are contracting the circulation. Moreover, when it is remembered that since 1893 the volume of transactions has been increasing with an increasing population and trade, it is clear that, in the absence of any change in the methods of business by which its use is economized, even a constant circulation must tend to the appreciation of the rupee. These views are illustrated graphically by the appended diagram.

THE FORT, MADRAS. J. C. HARRISON.

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THE DECREASE IN THE PROPORTION OF CHILDREN.

IN respect to the increase or decrease of different classes of the population the figures of the Eleventh Census present certain variations from previous or recognized proportions. Some of these peculiarities have been commented upon by various writers, who generally accept the fact and advance opinions more or less hypothetical as to the cause.

Of the analytical results of the census, those relating to mortality and vital statistics disclose in the greatest degree the effect of variations in the population figures, and direct attention to details not apparent in any study of the latter by themselves. Particular importance attaches to a peculiarity in the figures showing the age distribution of the population, because of its effect upon the computation of birth rates, of life tables and of death rates among children. This peculiarity is a great decrease in the proportion of children under five years of age during the decade 1880–1890, the proportion of this class in each 100,000 of total population having fallen from 13,786 in 1880 to 12,223 in 1890. The extent of this diminution may perhaps be better appreciated when it is stated that there is an apparent loss of over 1,000,000 children under five years of age, as compared with the proportion in 1880. The loss is general throughout the country, every state being affected to a greater or less extent, excepting some of the western states and territories which in 1880 were of comparatively recent settlement and had, naturally, a small proportion of children. There are, however, great differences in the ratios of decrease in contiguous states of more settled conditions and in different classes of population in the same state.

The proportions of children under one and under five years of age, per 100,000 population of known ages, on June 1, 1880, and on June 1, 1890, with distinction of color, are shown in the following table:

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	Under One.			Under Five.		
	Total.	White.	Colored.	Total.	White.	Colored.
1880 . . .	2,887	2,808	3,394	13,786	13,364	16,502
1890 . . .	2,508	2,477	2,733	12,223	11,993	13,887
Decrease . .	379	331	661	1,563	1,371	2,615

According to these figures, there were 1563 less children under five years of age in each 100,000 of population in the United States on June 1, 1890, than on June 1, 1880. The whites show a loss of 1371 and the colored of 2615 in each 100,000. The corresponding losses in the proportions under one year of age were : total, 379 ; white, 331 ; colored, 661. The greatest loss at each age in both white and colored occurred in those states and divisions having the largest percentage of colored population.

The following table shows, by grand divisions, the loss in the proportion of each class per 100,000 of the population from 1880 to 1890 :

	Under One.			Under Five.		
	Total.	White.	Colored.	Total.	White.	Colored.
No. Atlantic Div.	219	215	511	1084	1066	2182
So. " "	557	488	659	2261	1870	2824
No. Central "	319	313	575	1355	1329	2596
So. " "	609	566	729	2116	1855	2612
Western "	254	337	56	1215	1569	499

The population figures also show, not only that the proportion has decreased generally, but also that in twelve of the states —namely, Delaware, District of Columbia, Indiana, Maryland, Mississippi, New Hampshire, North Carolina, Ohio, South Carolina, Tennessee, Vermont and Virginia —there is an absolute decrease in the number of children under five years of age as compared with 1880. These states show as to total population a positive gain of 1,800,478, or 13.15 per cent ; and, at the same time, as to children under five, an actual loss of 48,827, or 2.53 per cent. Of this loss 21,437, or 43.90 per cent,

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were under one year of age. The figures for these states are given in the following table :

STATES.	POPULATION — ALL AGES.			POPULATION — UNDER FIVE.		
	1890.	1880.	Increase.	1890.	1880.	Decrease.
Aggregate . .	15,497,141	13,696,663	1,800,478	1,928,045	1,976,872	48,827
Delaware . . .	168,493	146,608	21,885	17,957	18,335	378
Dist. of Columbia	230,392	177,624	52,768	20,303	20,635	332
Indiana . . .	2,192,404	1,978,301	214,103	254,441	257,633	3,192
Maryland . . .	1,042,390	934,943	107,447	120,976	122,954	1,978
Mississippi . .	1,289,600	1,131,597	158,003	191,815	195,876	4,061
New Hampshire	376,530	346,991	29,539	30,321	30,573	252
North Carolina .	1,617,947	1,399,750	218,197	233,014	233,117	103
Ohio	3,672,316	3,198,062	474,254	399,617	405,427	5,810
South Carolina .	1,151,149	995,577	155,572	169,941	173,551	3,610
Tennessee . .	1,767,518	1,542,359	225,159	244,522	249,993	5,471
Vermont . . .	332,422	332,286	136	29,873	34,091	4,218
Virginia . . .	1,655,980	1,512,565	143,415	215,265	234,687	19,422

It is evident that a diminution in the proportion of children might be caused by either a decrease in the birth rate or an increase in the death rate. Upon the face of the census returns both these causes seem to be revealed. But such a marked falling off as the table shows in the number and proportion of children during a single decade involves a change in the death rate or birth rate, or both, of a most alarming character. Yet the fact of such change has generally been accepted, and much speculation has been indulged in as to the causes underlying it. Attention may perhaps be more profitably devoted to the statistics on which the fact itself depends.

Of the two factors concerned the birth rate has been more generally discussed, although it is the most incomplete and unsatisfactory of all the branches of vital statistics. Births were not specifically reported by the census enumerators in either 1880 or 1890, no inquiries relating thereto being included in any of the schedules. The number of births, as stated in the census reports, was *estimated* by adding to the living population under one year of age on June 1, 1890, as shown by the population figures, the number who were born during the year preceding that date,

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but who also *died* before June 1, as shown by the return of deaths. The correctness of the estimate as to the number of births, and consequently of the birth rate, depends therefore upon the completeness of the returns of both of these items. The return of deaths, however, except where secured by copying local registration records, is known and acknowledged to be very incomplete, and more so in 1890 than in 1880. This known deficiency in the return of deaths has been generally regarded as the principal cause of the incompleteness in the estimate of births.

The number of births in the United States, as estimated in 1880 and 1890, is shown in the following table :

Years.	Population under One.	Born and Died.	Births.
1880	1,447,983	104,314	1,552,297
1890	1,566,734	104,087	1,670,821

Considering the figures for 1890, as given in this statement, a short calculation shows that the "population" factor represents about ninety-four per cent and the "born and died" about six per cent of the whole, the ratio being about 15 to 1; hence a small percentage of deficiency in the enumeration of children of this age would have a much greater effect on the estimated number of births than a larger percentage of deficiency in the return of deaths. It will also be seen that, as the population under one year of age constitutes nine-tenths of the dividend in computing the birth rate and all of the divisor in computing the death rate at this age, any deficiency in the number would give too low a birth rate and too high a death rate for this class.

Regarding the population generally, there are but few data available for determining the error in the census returns; but for the children under one year and under five years of age the registration records of births in certain states and cities furnish an independent but parallel line of data for testing the accuracy of the figures as given for those places; and, while it is possible

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that an exact knowledge of the facts for the whole country would show a slightly increased rate of infantile mortality and a somewhat diminished birth rate, a careful analysis of the figures and a comparison of the population at certain ages with the births and deaths registered in localities maintaining a fairly accurate system of registration, will show that there are also very decided omissions in the enumeration of children.

Bearing in mind the fact, familiar to all who have made any study of vital statistics, that the registration of births is always less complete than that of deaths, it would seem to be a logical conclusion that the number of children under one year of age upon a certain date in any locality should not be less than the number of births registered during the year preceding that date *minus* those who died before the date fixed.

Of the several states Massachusetts has probably the most complete registration records. The machinery of the enumeration was practically the same, so far as supervision was concerned, as that employed in 1880 and in the intervening state census; and it is probable that the defects in the enumeration in that state are at least as slight as in any other. For these reasons the registration records of births and deaths in Massachusetts, in connection with the census compilation of deaths, based on copies of the same records, are used in the comparisons made herein.

The following table shows for the state of Massachusetts the deaths and death rates under one and under five years of age, with the births and birth rates per 1000 of population, as computed upon the United States census figures for 1880 and 1890:

BIRTHS, DEATHS AND RATES.	UNITED STATES CENSUSES.	
	1880.	1890.
Births	41,338	48,156
Birth rate . . .	23.18	21.51
Deaths under 1 . .	5,891	8,792
" " 5 . .	10,219	13,336
Death rate under 1	156.73	204.26
" " " 5	56.99	65.45

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Taking these figures as they stand, they show an increase in the death rate for both ages and a decrease in the birth rate.

The following table shows the number and proportion of children under five years of age in Massachusetts, according to the census figures of 1880 and 1890, with the variation in proportion :

Ages.	Population.		Number at each Age in 100,000 of all Ages.		Difference in Proportion.
	1880.	1890.	1880.	1890.	
All ages	1,783,085	2,238,943			
Under 5 years	179,307	203,758	10,056	9,101	— 955
Under 1 year	37,587	43,043	2,108	1,922	— 186
1 to 2 years	33,051	28,462	1,854	1,271	— 583
2 " 3 "	36,424	46,726	2,043	2,087	+ 44
3 " 4 "	35,989	44,367	2,018	1,982	— 36
4 " 5 "	36,256	41,160	2,033	1,838	— 195

From these figures it would appear that, while the aggregate population of the state increased 25.57 per cent in the decade, the increase in the number of children under five years of age was but 13.64 per cent, and the increase in the number under one but 14.52 per cent, while the proportion of children under five fell from 10,056 in each 100,000 in 1880 to 9101 in 1890.

The forty-ninth registration report of Massachusetts gives the number of births in the state during the year ending May 31, 1890, as 57,813, and the number of deaths under one year of age, exclusive of stillborn, as 9330. By taking the census return of deaths, based upon copies of the same registration records, and making a tabulation to show, for those who were born during the year, the month of death by the month of birth, it becomes possible to approximate closely the number of survivors on June 1 out of those born in each month of the year, and the actual number under one year of age on the day of the enumeration. The data available are therefore sufficient to determine very nearly the amount of error in the census figures given above, showing the population under one year of age in Massachusetts, the births as estimated, the birth rates and the death rates at this age. The following table shows

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the number of births registered in each month of the census year, with the number of deaths and the survivors out of those born in each month :

BIRTHS, DEATHS AND SURVIVORS.	BORN IN												
	Total.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mch.	Apr.	May.
Total Births	57813	4635	5070	5174	4944	4858	4712	4901	4947	4488	4891	4436	4757
Died in June	145	145											
" " July	336	150	186										
" " Aug.	458	116	165	177									
" " Sept.	478	80	110	121	167								
" " Oct.	388	41	65	68	76	138							
" " Nov.	333	18	29	42	55	56	133						
" " Dec.	369	17	29	36	41	38	57	151					
" " Jan.	538	34	32	37	49	48	56	89	193				
" " Feb.	425	19	31	22	29	28	36	48	59	153			
" " Mch.	552	31	36	30	42	47	29	49	60	74	154		
" " Apr.	549	18	32	32	25	33	20	52	58	58	72	149	
" " May	527	25	19	27	21	22	28	35	28	38	45	73	166
Total deaths	5098	694	734	592	505	410	359	424	398	323	271	222	166
Survivors	52715	3941	4336	4582	4439	4448	4353	4477	4549	4165	4620	4214	4591

The number of births registered includes only those born in the state; while the "born and died" includes a small number (41) of children of foreign birth, not distinguished by month of birth or death, which should be excluded; and the population returns also show a small number (498) of children of foreign birth which must be added to the survivors out of those born in the state, to give the living population under one year of age on June 1, 1890. The results are shown in the following statement :

CENSUS YEAR 1890.

Births registered		57,813
Born and died	5098	
Less foreign born	41	5,057
Survivors of native birth		52,756
Foreign-born children under 1 year		498
Total under 1 year		53,254
Population reported as under 1 year		43,043
Deficiency		10,211

From this statement it appears that the number of children under one year of age, as given in the census reports, is less by

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10,211 than the number of survivors out of those born during the year, the deficiency being equal to 23.72 per cent of the population reported.

In this statement no allowance has been made for any deficiency in the registration of births; hence it is reasonable to suppose that the deficiency in the population presented in the table represents the minimum. Interstate migrations, being a small factor in this class of population, may be held to balance. It is claimed by the registration officers that the deficiency in the registration of births does not exceed two per cent; if the number of births be increased by that amount, the gross deficiency for children under one year would be 11,367, or 26.41 per cent. It is probable that the actual deficiency in the population of Massachusetts reported as under one year of age is not less than twenty-five per cent in round numbers.

The same registration report gives the number of births during the census year 1880 as 42,053. Deducting from this the number of the "born and died" (exclusive of stillborn), namely, 3751, and adding 649 children of foreign birth, the total number of children under one year of age on June 1, 1880, would be 38,951. The number reported in the population was 37,587, showing a deficiency of 1364, or 3.62 per cent, in the population as compared with the survivors out of those born in the census year 1880. Assuming the same deficiency as above in the registration of births, the deficiency in the population under one year of age for 1880 would be about five per cent.

There is always considerable error in the age distribution of the population as reported, of adults as well as of children, owing to the universal tendency to state ages in round numbers; and a deficiency in the number of children under one year of age is generally expected, upon the theory that children of ten or eleven months will be reported as one year old. The estimated deficiency of twenty-five per cent in the population of Massachusetts reported as under one year of age, is perhaps partly due to the tendency mentioned. The effect of this would be to increase the number between one and two years of age be-

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yond its normal proportions; and if such an increase were apparent in the figures, it might be held conclusive of the theory referred to. In fact, however, it appears from the table of proportions given for single years that there is a greater loss for those between one and two years than for those under one.

The registration reports also afford a means of determining the deficiency in the population under five years of age, not, indeed, so accurately as in the case of those under one — since the census returns were made only for the single year ending May 31, 1890, and because the data concerning those who were born and died in each of the other years are lacking — but still sufficiently to show the error within certain reasonable limits. The error in the age distribution by single years, however, cannot be calculated from the data available.

The children under five years of age on June 1, 1890, were necessarily the survivors out of those who were born during the five years preceding that date. The number of births in the state during this period and the number dying each year from birth to five years of age are shown in the registration reports; and these numbers, together with that for the foreign-born population under five, as shown by the census figures, furnish the data for our comparison, some correction being necessary to make the registration figures for calendar years correspond in time with the census results.

The following table shows the births during the years 1886–1890 and the deaths at ages which would bring the births within the five-year period, excepting the highest age in each year, for which a correction is necessary:

YEARS ENDING MAY 31ST.	BIRTHS.	DEATHS UNDER 5 YEARS, WITH AGES AT DEATH.					
		Total.	Under One.	1–2.	2–3.	3–4.	4–5.
1886	49,021	7,721	7,721				
1887	52,060	10,210	8,137	2,073			
1888	53,437	12,000	8,668	2,232	1,100		
1889	56,175	13,037	8,972	2,208	1,113	744	
1890	57,813	13,743	9,330	2,173	1,037	688	515
Total	268,506	56,711	42,828	8,686	3,250	1,432	515

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The number of deaths shown in this table is not strictly comparable with the number of births in the five years: first, because a part of those dying in the year 1886 under one year of age were born in the previous year (1885); second, because part of those dying in 1887 between one and two years of age were likewise born in 1885, and so on for the highest age in each year; and, finally, because the deaths include children born in other countries or in other states. It may be assumed, however, that the proportion of these classes was much the same in each year; and the general effect may be calculated by applying the known proportion in the census figures, without making corrections for each detail.

Summing up the numbers at the highest age in each year, we have included in this table 12,153 deaths of persons born either in 1885 or 1886; and, as the number of births in each of these years was about the same, 6000 would approximate with sufficient accuracy the number of these that were born in 1885, and must therefore be excluded from the deaths.

According to the census returns for 1890 there were 387 children of foreign birth who died during the census year at ages under five; and as the proportion of living children of this class was almost identical in 1885 (state census) and in 1890, it is a reasonable presumption that the ratio of deaths of foreign-born children in each year was about the same as in 1890. Applying this ratio to the deaths stated in the table above, we have a total of 1329 deaths also to be excluded, as not occurring out of the stated number of births.

The population reported as under five years of age on June 1, 1890, was 203,758, of whom 8029 were of foreign birth.

The deficiency in the population of Massachusetts reported as under five years of age thus appears to be 23,396, or 11.48 per cent; and this is the minimum, no allowance having been made for any deficiency in the return of births with which it is compared. If, as in case of those under one year of age, the estimated deficiency of two per cent in the registration of births is allowed, the percentage of deficiency in the popula-

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tion under five years would be 14.12 per cent. It is certainly not less than fourteen and probably exceeds fifteen per cent.

The tabulated statement of the results of the foregoing is as follows:

YEARS 1886–1890.

Births			268,507
Deaths under 5 years. Total		56,711	
" of those born previously	6,000		
" " foreign born	1,329	7,329	
" corrected			49,382
Survivors			219,125
Foreign born, living			8,029
Total under 5 years			227,154
Population reported			203,758
Deficiency			23,396

The corresponding deficiency in the census figures for 1880 appears to be about the same, proportionally, as in case of those under one year of age, which would make it 2.80 per cent.

The following table shows the result of applying the deficiency percentages determined above to the figures for Massachusetts, as given in the census reports:

POPULATION, BIRTHS, DEATHS AND RATES.	REPORTED.		CORRECTED.	
	1880.	1890.	1880.	1890.
Population	1,783,085	2,238,943		
Under 1 year	37,587	43,043	39,466	53,804
" 5 years	179,307	203,758	184,328	232,284
Propor. per 100,000				
Under 1 year	2,108	1,922	2,213	2,403
" 5 years	10,056	9,101	10,338	10,375
Births	41,338	48,156	43,217	58,902
Birth rates	23.18	21.51	24.24	26.31
Deaths, under 1 year	5,891	8,792		
" 5 years	10,219	13,336		
Death rate per 1000 pop.				
Under 1 year	156.73	204.26	149.27	163 41
" 5 years	56.99	65.45	55.44	57.41

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From this table it will be seen that, when the numbers of children under one and under five years of age are increased by the amount of the deficiency calculated above, the proportions at each age show an increase over the proportions in 1880, this increase being greatest in respect to those under one. There appears also an increased instead of a diminished birth rate for the census year 1890, which difference accounts for the increase in the proportion of those under one in that year. The death rate remains for both ages slightly higher than in 1880, but the difference is probably due more to the conservative estimate of the deficiency in the population of these ages in 1890 than to any actual increase in the death rates.

Upon the basis of a fourteen per cent deficiency in the number of children under five in 1890, the correct number at this age appears to be 232,284; and if we apply the corrected proportion in 1880 (10,338 per 100,000) to the aggregate population of the state in 1890, we get 231,462 as the number under five years of age — which is a very close approximation.

At the beginning of this discussion it was stated that there was an apparent loss of 1,000,000 under five years of age in the reported population of the United States, in comparison with the proportion existing in 1880; and it was assumed, on reasonable grounds, that the actual deficiency would not be less for the whole country than it was in Massachusetts. In the following table an application of the results obtained for Massachusetts is made to the figures reported for the United States.

Population and Proportion.	Reported.		Corrected.	
	1880.	1890.	1880.	1890.
Population	50,155,783	62,622,250		
Under 1 year . . .	1,447,983	1,566,736	1,520,382	1,958,420
" 5 years. . .	6,914,516	7,634,693	7,108,122	8,703,550
Proportion:				
Under 1 year . . .	2,887	2,502	3,031	3,127
" 5 years . .	13,786	12,192	14,172	13,898

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From this table it will be seen that the difference between the number of children reported as under five years of age (7,634,693) and the number estimated upon the basis of the fourteen per cent deficiency shown for Massachusetts (8,703,550) is 1,068,857. If we calculate the deficiency upon the basis of the corrected proportion in 1880 (14,172 per 1,000,000), we get a difference of 1,240,132, indicating a greater deficiency in the remainder of the United States than is found in Massachusetts.

The deficiency in the return of deaths for the greater part of the United States precludes any determination of the comparative death rates of children for the country as a whole, or in most of the states. This deficiency is admitted, and is guarded against in the analysis of the census figures relating to mortality and vital statistics, the death rates being computed only for localities in which the return of deaths was secured from registration records — such as the New England states (except Maine), New York, New Jersey, Delaware, the District of Columbia, and the larger cities of the country, which cover, generally, the areas having low birth rates and a high rate of mortality among children. The conclusions derived from the comparisons herein made indicate, however, that the defects in the return of deaths are overshadowed by the defects in the enumeration of the population, and that with a correct enumeration the seeming decrease in the birth rate and the increase in the death rate of children would disappear.

The foregoing discussion has been confined to a test of the accuracy of the census enumeration of the population in the early years of life. The registration data with which the census figures are compared must be admitted to be more accurate than any enumeration of the population can be made under the present system, and the figures presented justify the conclusions reached as to the percentage of children omitted. No analogous conclusions, however, are to be drawn as to other periods of life. It is probable that the omission is much greater in the case of those under five years than for those of any similar period above that age.

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If the conclusions reached above are accepted, the questions will naturally arise: Why was the enumeration more deficient in 1890 than in 1880? and why was the omission greater in the enumeration of children than of adults?

Of a variety of causes operating to produce the effects noticed, the most potent, comprehensive and simple was that too much was expected of the enumerators for the compensation accorded them. The schedules were too numerous, the inquiries too extended, the enumeration districts too large, the supervisors too remote, the time for preparation too short and the pay too small. The enumerators speedily discovered that there was no money in their task. This being the case, it was natural that in an army of 45,000 enumerators, selected in the way they were, there should be many who were inclined to skip the difficult or unpleasant parts; and an inclination to slight the work for any cause would naturally be exercised against unhealthy, unsavory localities — the dwelling places of the poor. It was among this class of population that the greatest omissions undoubtedly occurred, and it is this class which has the greatest proportion of children. It is safe to say that until the system and conditions of our census-taking are changed or the inquiries largely restricted the enumeration cannot be made accurate.

It will be observed that the deficiencies noted above are not due to defects in the office work of compilation. As heretofore organized, the census office has had faults enough — inevitable faults — arising from the lack of experience in the working force; but these have tended principally to delay the results and increase the expense of compilation. After the necessary experience has been gained, the work has generally been all that could be expected; but the most efficient force, properly organized and capably directed, can do no more than make a correct compilation of the returns.

WILLIAM A. KING.

WASHINGTON, D. C.

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COMMENTS ON FEDERAL TRUST LEGISLATION.

Part First.

ON July 2, 1890, Congress passed "an act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Trust Act. This act relates to both foreign and domestic trade, but I shall consider only its bearing upon the latter. The act is general in its terms, and is aimed at all unlawful restraints and monopolies which fall within the jurisdiction of Congress. This jurisdiction must be based upon Article I, section 8 of the constitution, which invests Congress with the power to regulate commerce among the states. In one direction the jurisdiction is conceded — the right of Congress, by virtue of this section, to regulate interstate transportation was established many years ago, and has been maintained in the face of every attempt to restrain or embarrass transportation by state regulations or other means. It is now declared that Congress has the additional right to regulate the subjects of transportation, — the articles of commerce among the states, — at least to the extent of forbidding their subjection to monopolies, trusts and contracts in restraint of trade, and that this right is asserted in the general Trust Act. Furthermore, a bill lately reported to the Senate makes it a misdemeanor to

> monopolize or engross the trade or commerce in any commodity, product or manufacture of any kind among the several states or with foreign nations, for the purpose of unduly enhancing, affecting or controlling the price of such commodity, product or manufacture to the consumers of this country.

I shall not consider whether anti-trust legislation of which the Trust Act is a type is altogether expedient from an economic standpoint — whether it can be enforced so discriminatingly as to destroy great combinations without impairing the faculty of coöperation which plays so important a part in our industrial system. These considerations must

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give place to the primary question whether Congress has the power to make anti-trust laws which shall be valid and effective so far as they relate to the subjects of interstate commerce.

I.

The prime object of the monopolist is to control production, and the most powerful industrial trusts are those which so nearly control the output of a given commodity that they are able to fix its price without fear of competitors and in deference only to the ability of consumers.

After the passage of the Trust Act the government instituted proceedings against several trusts for the purpose of thwarting their efforts to control production. The lower courts decided that the act did not authorize the government to interfere with transactions looking to the acquisition and control of property within a state. The principle of the decisions was clearly stated by Justice Jackson in Greene's case[1] (Distilling and Cattle Feeding Trust).

> Congress certainly has not the power or authority under the commerce clause, or any other provision of the constitution, to limit and restrict the right of corporations created by the states or the citizens of the states, in the acquisition, control and disposition of property. Neither can Congress regulate or prescribe the price or prices at which such property or the products thereof shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over, and cannot make criminal, the aims, purposes and intentions of persons in the acquisition and control of property, which the states of their residence sanction and permit. It is not material that such property or the products thereof may become the subject of trade and commerce among the several states or with foreign nations.

A suit against the Sugar Trust was finally carried to the supreme court, which decided, Justice Harlan alone dissenting, that it could not be maintained, because Congress had not, and did not claim, the power to regulate production within a state.[2] In the course of the opinion Chief Justice

[1] 52 Fed. Rep. 104.

[2] U. S. *vs.* E. C. Knight Co., 156 U. S. 1.

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Fuller repeated substantially the views of Justice Jackson in Greene's case, saying:

> It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property should be sold; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence sanctioned or permitted.

It is settled, therefore, that Congress is powerless to prevent monopoly of production within a state.

II.

The opinion in the Sugar Trust case makes it plain that transactions in commodities, in order to lie within range of a federal trust act, must be subsequent to production; and we are led, therefore, to inquire as to the jurisdiction of Congress over the sale of commodities and contracts relating thereto.

In Gibbons *vs.* Ogden,[1] Chief Justice Marshall said of "commerce":

> It describes the commercial intercourse between nations and parts of nations. . . . The mind can scarcely conceive a system for regulating commerce between nations which shall . . . be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling or of barter.

This and other judicial observations of like tenor are of the most general import, and do not throw any light upon the novel question whether Congress may condemn transactions which tend to create monopolies or restrain trade in articles of interstate commerce.

The jurisdiction assumed by the federal courts, in cases coming to them by reason of the residence of the parties, to

[1] 9 Wheat. 189.

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decide questions of commercial law without reference to the decisions of state courts, has no bearing on the question we are considering. This jurisdiction originates in a rule of court, and is unrelated to any legislative power over interstate commerce. The Judiciary Act of 1789, chapter 20, declares that

> the laws of the several states, except where the constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.

This is a plain declaration of a constitutional limitation imposed upon federal courts. But the supreme court holds that the decisions of a state court are not "laws," within the meaning of the Judiciary Act. In Swift *vs.* Tyson,[1] Justice Story said that the act applied to

> state laws strictly local, that is to say, to the positive statutes of the states, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character,

and that it did not apply to "contracts and other instruments of a commercial nature." When the federal courts disregard state decisions in matters of commercial law, they exercise a permissive jurisdiction, which is terminated whenever a state passes a law governing the subject. The fact that the jurisdiction is permissive dissociates it from the federal power over interstate commerce; for that, like all federal powers, is absolute and independent. Hence, when, in Myrick *vs.* Railroad Co.,[2] the supreme court defines the liability of a common carrier on a contract for carriage between Chicago and Philadelphia differently from the rule apparently laid down by the courts of Illinois, we must bear in mind that it is not declaring the federal power over interstate commerce, but is merely reaching an independent conclusion in a matter of commercial law.

[1] 16 Pet. 1. [2] 107 U. S. 102.

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A contract of sale made within a state and completed therein by delivery is not interstate commerce, although the purchaser may buy for export. The transaction is a matter of state concern only, and is recognized as such in the Sugar Trust decision. The fact that the purchaser resides in another state is wholly immaterial. Said Justice Field, in Paul *vs.* Virginia: "They [certain contracts of insurance] do not constitute commerce between the states any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce."[1] A trust may, then, sell and deliver its product within the state of production without subjecting its action to federal scrutiny and interference.

We come now to acts and agreements respecting articles of commerce which are done or made within a state and do not involve interstate transportation, yet affect market conditions elsewhere. We may discover whether these are subject to federal or to state regulation by determining whether they fall within the jurisdiction of federal or of state courts. In either case the jurisdiction must be complete, including both civil and criminal control; a transaction subject to exclusive state regulation cannot be declared criminal by Congress, nor can a state uphold that which Congress has lawfully condemned. Further, the jurisdiction must, in either case, be exclusive. This position is sustained by two settled propositions of the law of interstate commerce. One is that federal power over such commerce is exclusive, although in some matters of primarily local interest in which uniformity is not requisite the states are permitted to act until Congress chooses to act for itself. Thus, in the absence of federal legislation a state may make pilotage regulations[2] and regulate elevator charges[3] and railway rates,[4] although the charges and rates may affect interstate commerce. If the acts and agreements in question do restrain commerce among the states in the constitutional sense, they cannot be classed among matters of

[1] 8 Wall. 168.
[2] Cooley *vs.* Wardens, 12 How. 299.
[3] Munn *vs.* Illinois, 94 U. S. 113.
[4] Railway *vs.* Iowa, 94 U. S. 155.

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local interest in which uniformity is unnecessary. They involve general principles of commercial law; and we have seen that the supreme court is so impressed with the desirability of a standard commercial law that it declares and enforces a uniform system, except as it may be restrained by the acts of state legislatures: *a fortiori*, should the principles of the constitutional law of interstate commerce be uniform in statement and application.

The second proposition on which the doctrine of exclusive jurisdiction is based is this: that, in the absence of any federal regulation to the contrary, commerce among the states shall be free. This makes it doubly clear that the contracts mentioned are not properly cognizable by state courts when they suggest a federal question. If, then, a contract is alleged to be monopolistic or in restraint of trade, and it appears that if the allegation is true there must be a restraint on commerce among the states, in the constitutional sense, there is a question determinable only by the federal courts, to whom is confided the whole duty of defining and maintaining federal powers.

In Diamond Match Co. *vs.* Roeber,[1] the plaintiff, a foreign corporation, sued upon a covenant made by the defendant with plaintiff's assignor in connection with the purchase of his match factory in New York. By this covenant Roeber agreed for valuable consideration to refrain from making or selling matches in every state save two, except in the company's service. The New York Court of Appeals held that the covenant was not in restraint of trade, and decided in favor of the plaintiff. It was not suggested that a federal question was involved, although the court recognized the wide effect of the covenant, saying:

> The boundaries of the states are not those of trade and commerce, and business is restrained within no such limit. The country, as a whole, is that of which we are citizens, and our duty and allegiance are due both to the state and nation. Nor is it true, as a general rule, that a business established here cannot extend beyond the state, or that it may not be successfully established outside of

[1] 106 N. Y. 473.

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the state. There are trades and employments which, from their nature, are localized; but this is not true of manufacturing industries in general.

The transaction on which this case rested was indistinguishable from thousands of others which, carried on within a state, affect market conditions elsewhere, yet are governed by the law of place — the place being the state, not the United States. The covenant did not affect commerce among the states, for Roeber simply agreed in New York to refrain from selling matches in certain states. Congress could not have condemned the contract, had its effect been limited to New York, or, by parity of reasoning, similar contracts in other states. Now, when a contract made in New York to refrain from selling within the state may be duplicated in New Jersey, for example (and therefore in other states), without interfering with interstate commerce, there can be no interference when a contract made in New York covers other states; for, from a federal standpoint, the single and duplicate contracts effect precisely the same result — restriction within the limits of states.

Justice Lamar said, in Kidd *vs.* Pearson:[1] "The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation." This sentence suggests the exclusion of the transactions in question from the jurisdiction of Congress. The transportation of commodities among the states is a matter of federal concern, to the extent, at least, of keeping the ways clear; the buying and selling within a state is not, except in the obvious sense that a state cannot restrain the sale of a commodity because it is imported or for the purpose of preventing its exportation.

Chief Justice Fuller said in the Sugar Trust case: "Contracts to buy, sell or exchange goods to be transported among the several states . . . form part of interstate trade or commerce." In Robbins *vs.* Shelby Taxing District,[2] Justice Bradley said: "The negotiation of sales of goods which are in another state,

[1] 128 U. S. 20. [2] 120 U. S. 497.

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for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce"; and so the court decided that the agent of an Ohio firm selling goods by sample in Tennessee could not be subjected to a license tax in the latter state.

We understand, then, that the contracts and negotiations under discussion cannot be hampered by the states; but the supreme court has not yet been called upon to decide whether trust agreements involving the transportation of goods from one state to another so restrain interstate commerce in the constitutional sense as to fall within the scope of the Trust Act. This question has been considered in U. S. *vs.* Addyston Pipe Co.[1] The government sought to enjoin the Associated Pipe Works, composed of six corporations, located in several states, which had agreed to divide the business of selling cast-iron pipe in the states and territories west of Pennsylvania and south of Virginia. The court refused the injunction, upon the authority of the opinion of the supreme court in the Sugar Trust case, and said:

> If every private enterprise which is carried on in part or chiefly by interstate shipments, or by a mode of business which makes this necessary, is to be regarded as thereby so related to interstate commerce as to come within the regulating power of Congress, it is obvious that this power could at once be extended to almost every form of business in the country which is conducted on anything like an extensive scale. So liberal an interpretation as this would obviously, in a large sense, obliterate the lines between federal and state jurisdiction, and, as an act of Congress is paramount in authority, would strike down the autonomy of the states.

III.

After considering the relation of the federal power to transactions involving the acquisition and disposition of articles of commerce, it is material to determine its relation to the articles themselves.

I shall not attempt to define an article of interstate commerce

[1] 78 Fed. Rep. 712.

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categorically. Generally speaking, it is a thing which is the subject of traffic — usually but not necessarily tangible.[1] But everything which may be bought and sold is not within the definition. Thus, a state may impose a tax on local dealers in foreign bills of exchange. In the language of the court: "A bill of exchange is neither an export nor an import." It is "an instrument of commerce."[2] Again, when a foreign insurance company issues a fire insurance policy within a state, it is not engaged in interstate commerce; the policy is simply a contract of indemnity against loss.[3] Moreover, a state may have a peculiar right in a thing by virtue of which it may control its disposition. Thus, in Geer *vs.* Connecticut[4] the supreme court sustained a state law forbidding the exportation of quail, woodcock and ruffed grouse, although these birds could be lawfully killed in certain seasons and sold within the state. The ground of the decision was that a state may

> preserve a food supply which belongs in common to all the people of the state, which can only be the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the state and subject to the conditions which it may deem best to impose for the public good.

Who shall decide, upon occasion, whether a particular thing is an article of interstate commerce?

In Peirce *vs.* New Hampshire[5] Justice Catron, after saying that the state court had assumed that a state may "declare what should be an article of lawful commerce in the particular state," continued:

> If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation; for it takes from Congress and leaves with the states the power to determine the commodities or articles of property which are the subjects of lawful commerce. Congress may regulate, but the states determine what shall or shall not be regu-

[1] A state law taxing interstate telegrams would be void as a restraint on commerce. — Telegraph Co. *vs.* Texas, 105 U. S. 460.

[2] Nathan *vs.* Louisiana, 8 How. 81.

[3] Paul *vs.* Virginia, 8 Wall. 108.

[4] 161 U. S. 519.

[5] License Cases, 5 How. 600.

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lated. Upon this theory, the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the state police power; for it is obvious that the power to determine the articles which may be the subject of commerce, and thus to circumscribe its scope and operation is, in effect, the controlling one. The police power would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated.

Justice Catron thus shows that the states are not at liberty to say what shall or shall not be articles of interstate commerce.

It was, indeed, said in Peirce *vs.* New Hampshire that a state may forbid the sale of imported liquor, provided Congress has made no regulation on the subject. This view was supplanted, however, in Leisy *vs.* Hardin[1] by the proposition that a state cannot close its doors to a commodity because Congress has not expressly declared that they shall be kept open, but must, in the absence of federal regulation to the contrary, permit the importation and sale of articles in their original packages. These decisions present other features which will be considered later; but they serve at present as authorities for the statement that whether a particular thing is an article of interstate commerce, is a federal question.

When does a commodity produced within a state become an article of interstate commerce?

Chief Justice Fuller said, in the Sugar Trust case:[2] "The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce." This was the governing principle of Kidd *vs.* Pearson,[3] where it was held that a state law forbidding the manufacture of liquor extended to manufacture for export. But, although a state is not compelled to exempt articles intended for export from the burden of its prohibitory laws, it cannot single out such articles for the purpose of prohibiting their production or exportation.

[1] 135 U. S. 100. [3] 128 U. S. 1.
[2] U. S. *vs.* Knight Co., 156 U. S. 1.

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The movement of a commodity preparatory to its actual shipment for export does not bring it within the description of an article of interstate commerce, and it is subject to local taxation until it is in course of transportation to another state.[1] Once in transit from one state to another, it becomes an article of interstate commerce, and retains this character until it is disposed of in the state of destination and becomes merged in the mass of property subject to the local law.[2]

What is the extent of the federal power to "regulate" commodities?

As in most subjects in the law of the federal constitution, the answer here turns on the peculiar relation between the United States and the states. The first point to be determined is whether the federal power to regulate is qualified by state power. One of the most potent incentives to federal union was the inclination of each of the loosely confederated states to seek its selfish interest by imposing commercial restrictions intended to promote its own well-being at the expense of the others. The states relieved the situation by abandoning their restrictive powers and investing Congress with the power to regulate interstate commerce. The supreme court has on occasion maintained federal supremacy by annulling state laws that restrained or embarrassed commerce; and the sum of the decisions is that commerce shall be free.

In one direction, however, the state of the law permits the suggestion that the last word has not been said. I refer to the right claimed at times by states to exclude, by virtue of the police power, articles deemed to be injurious to health or morals. It is clear that a state cannot exert this power so as to discriminate against imported articles. Thus, a statute prescribing that certain meats should not be sold unless the animals had been examined by resident inspectors before slaughter, was declared invalid because it would shut out foreign meats.[3] But when the manufacture and sale of a particular article is forbidden by state law, there is something to be said in support of

[1] Coe *vs.* Erroll, 116 U. S. 517. [2] Leisy *vs.* Hardin, 135 U. S. 100.
[3] Minnesota *vs.* Barber, 136 U. S. 313.

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the state's right to forbid the sale of the same article when imported. The point of difference between Peirce *vs.* New Hampshire and Leisy *vs.* Hardin was, as we have seen, on the question whether a state could forbid the sale of imported liquor in the absence of federal legislation recognizing it as an article of commerce. Both decisions approve the proposition that Congress may compel the reception of liquor by an unwilling state.

The principle underlying this proposition is, in my opinion, severely damaged in Plumley *vs.* Massachusetts.[1] The Massachusetts legislature prohibited the sale of oleomargarine that resembled butter. Plumley was indicted for selling such oleomargarine which had been consigned to him as agent for a Chicago manufacturer. The state court sustained the indictment and the Supreme Court of the United States approved the decision on writ of error. It was urged on behalf of Plumley that according to Leisy *vs.* Hardin he could not be indicted for selling imported oleomargarine in "original packages." The supreme court held, however, that Leisy *vs.* Hardin

> must be restrained in its application to the case actually presented for determination, and does not justify the broad contention that a state is powerless to prevent the sale of articles manufactured in or brought from another state, and subjects of traffic and commerce, if their sale may cheat the people into purchasing something they do not intend to buy and which is wholly different from what its condition and appearance import.

Suppose a state should forbid the sale of all liquor on the ground that adulteration is so common that a purchaser is likely to be deceived. Would such a law differ in kind from the oleomargarine law of Massachusetts? A state may punish vendors of fraudulent or unwholesome articles and condemn the articles, whether imported or domestic. It may condemn oleomargarine which is offered for sale as butter and fusel oil which is offered as whiskey; but, if it can exclude all oleomargarine because some of it may be sold as butter, why can it not exclude all whiskey because some of it may be adulterated?

[1] 155 U. S. 474.

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It is true that much of the whiskey may be pure, and that the buyer may receive the worth of his money ; but it is equally true that oleomargarine is usually wholesome, and that it may be sold for what it is. According to Leisy *vs.* Hardin and Plumley *vs.* Massachusetts, a state cannot exclude liquor which its people may consider injurious to morals, but can exclude wholesome oleomargarine because it may be sold as butter. The distinction suggested by these cases is, in my judgment, untenable. Indeed, it is rather shocking to hold that a state must receive something which in its best form is deemed injurious to the welfare of the people, and yet may exclude a thing harmless in itself because it may be palmed off for something else.

Leisy *vs.* Hardin is not in accord with Plumley *vs.* Massachusetts; and, when it is said in the latter case that the rule laid down in the former must be "restrained in its application to the case actually presented for determination," the decision is evidently discredited as a guide. It must be admitted that Leisy *vs.* Hardin went to the very edge of state rights; and, in my opinion, it trespassed on state rights. Plumley's case suggests the proposition that if a state may forbid the sale of an article, it may enforce the prohibition against the imported article; and this will afford just protection to the state without qualifying unduly the federal power to regulate commerce.

In Justice Catron's opinion in Peirce *vs.* New Hampshire, already cited, he says that if the states should have the power to designate articles of commerce,

> the police power [of the states] would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power [of Congress], as the power to regulate is dependent upon the power to fix and determine the subjects to be regulated.

When these words were written the power of a state legislature to enact laws affecting property was limited only by the local organic law as defined by the local courts, except so far as federal restraint was imposed specifically, as in the case of laws impairing the obligation of contracts. The state constitutions usually declared that no one should be deprived of property without due process of law, but what was "due proc-

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ess" in a particular case was not a federal question. In these circumstances, an admission that a state could exclude a commodity by asserting its police power, while it was the sole judge whether the power was abused or not, might have provoked the conflict suggested by Justice Catron.

The circumstances are now materially changed by the adoption of the Fourteenth Amendment, which forbids the states to deprive any person of property without due process of law. What is "due process" is now a federal question; and, though the supreme court has declared emphatically that the amendment is not intended to restrain the police power of the states, it is nevertheless true that the court may unmask and annul a state law which, under the guise of a police regulation, effects an arbitrary deprivation of property. Said the court in Mugler *vs.* Kansas:[1]

> If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution.

Although the supreme court has found it necessary to repulse a crowd of litigants, who have besieged it with appeals to annul state laws on the ground that they contravened the Fourteenth Amendment, and has wisely refrained from defining a deprivation without "due process" by hypothetical illustrations, it possesses the power to annul, and will exert it in a proper case.[2] There is, therefore, no danger of conflict between the police power of the states and the commerce power of Congress; for, if the supreme court decides that a state is not justified in forbidding the manufacture and sale of a particular article, it follows that the state cannot exclude it. If, however, the court finds that the state is justified on the ground of public health, safety or morality, how can it find also that federal power over commerce permits this laudable policy to be damaged by any one who chooses to send the article into the state?

[1] 123 U. S. 661. [2] See Allgeyer *vs.* Louisiana, 165 U. S. 578.

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The proposition derived from Plumley's case does not admit a state's right to exclude articles for any reason save their objectionableness — either essential, as in infected things, or imputed by statute, as in liquors or lottery tickets. Therefore, assuming that a state may forbid the production and sale of commodities by trusts or combinations, it cannot prevent the importation of goods produced by trusts beyond its jurisdiction. The powers of Congress over interstate commerce would be damaged irreparably, if a state could bar out a consignment of sugar, for example, merely because it had been produced by agencies which were disapproved by the local economic policy.

Many years ago Judge Story inquired:

> Can Congress, under the power to regulate commerce among the states, prohibit the transportation or export of goods or products from one state to another? *Ex gratia*, can Congress prohibit the exportation of slaves from one state to another for sale?[1]

The specific question is now of historic interest only. The general question is yet unanswered.

During the Civil War our government declared a blockade of the Southern ports. This action, however, like the non-intercourse legislation of the same period, was the exercise of a belligerent right, not a regulation of commerce.[2] Again, the action of Congress in excluding lottery matter from the mails is justified, not by the power to regulate commerce, but because the government has such control over the postal system that it may decline "to become an agent in the circulation of printed matter which it regards as injurious to the people."[3] As to the liquor traffic, it has been decided that Congress may permit a state to forbid the sale of imported liquor in the original packages,[4] provided the action of the state is in harmony with a local prohibitory law and does not operate to relieve domestic traffic from foreign competition.[5]

[1] Commentaries, 2d ed., section 1075, note 3.
[2] See Prize Cases, 2 Black 635.
[3] Rapier's Case, 143 U. S. 110.
[4] Rahrer's Case, 140 U. S. 545.
[5] Scott *vs.* Donald, 165 U. S. 58 (South Carolina Dispensary Case).

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The permissive act was passed in 1890 to enable prohibition states to do what the supreme court had declared in Leisy *vs.* Hardin they could not do without the consent of Congress. This act was necessary in order to place the states in a position to make the police power over liquor thoroughly effective; but it is unfortunate, nevertheless, that the efficiency of the power should depend upon the grace of Congress. We have seen, however, that the rule of Leisy *vs.* Hardin has been closely limited to the facts in the case; and if, as I have suggested, Plumley's case indicates a liberal recognition of state rights, Congress is not likely to be called upon to pass another permissive act. In any event, the principle of Rahrer's case does not admit a power in Congress to permit a state to close its markets against each and every article which Congress and the state legislature may unite in condemning. The federal permission can be granted only in respect of such articles as the state can prohibit by a proper exertion of the police power.

The Supreme Court of the United States has never been required to decide whether Congress, by virtue of the power to regulate interstate commerce, may authorize federal officials to prevent the transfer of articles from one state to another or to seize them in transit. Such authorization was given by Congress in the Trust Act of 1890, under the sixth section:

> Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

Does this section express the constitutional power of Congress over interstate commerce? By Article I, section 8, of the constitution, Congress is invested with power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes." From the identity in the

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terms of the grant it has been argued, or rather presumed, that the three powers involved are coextensive; but it will not be difficult to show that this position is erroneous, and that the power over interstate commerce is substantially less than that over commerce with foreign nations and with the Indians.

The assertion of identity between the power over interstate and that over Indian commerce might be dismissed almost summarily. The Indian tribes are, in the language of Chief Justice Marshall,

> in a state of pupilage. Their relation to the United States resembles that of a ward to its guardian. They look to our government for protection; rely upon its kindness and power; appeal to it for relief to their wants; and address the President as their great father.[1]

Whatever relation the states may bear to the federal government, it is not this. The dependent position of the Indians justified the supreme court in saying:

> As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the government, Congress has the power to say with whom and on what terms they shall deal, and what articles shall be contraband.[2]

Whatever power Congress may have over interstate commerce, it is not this.

It is a fair rule of interpretation that, when powers in respect of several subjects are presumed to be coextensive merely because of identity in the terms of the grants, the differentiation as to one subject destroys the presumption as to the rest. But we need not stop here; for, in point of fact, the assumed parallel between interstate and international commerce is, so far as federal power is concerned, quite as illusory as in the case of Indian trade, and for the same reason — a radical difference in the relations of the parties.

The United States deals with a foreign nation as one sovereign with another. It has no legal relation with the foreign state and, apart from the obligation of treaties, no conventional one. Its attitude toward other nations is dictated by policy,

[1] Cherokee Nation *vs.* Georgia, 5 Peters, 17.

[2] U. S. *vs.* Forty-three Gallons of Whiskey, 93 U. S. 188.

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tempered in some directions by international law; and it may discriminate between them — inclining toward one and away from another — as its interests may appear to require. In dealing with the states, on the other hand, the United States is in communion with its members, whose relation to each other and to the federal government is fixed by law. By this law all states are of equal rank and are entitled to equal consideration at the hands of Congress. Hence the right to regulate commerce discriminately, which is an essential feature of the federal power when applied to foreign countries, does not exist in the case of interstate commerce.

Again, Congress taxes foreign imports for the purpose of encouraging domestic industries, and Judge Story bases this protective system on the power to regulate commerce; but surely Congress may not impose a tariff on manufactures from the Eastern and Middle states in order to encourage industries in the West and South. In 1807 Congress laid an embargo upon foreign trade, and described the measure as "neither hostile in its character nor as justifying or inciting or leading to hostility to any nation whatever." The constitutionality of the Embargo Act was savagely attacked, but the law was sustained in a district court;[1] and in Gibbons *vs.* Ogden Chief Justice Marshall referred to "the universally acknowledged power of the government to impose embargoes," described them as "sometimes resorted to without a view to war and with a single view to commerce," and said of the act of 1807: "By its friends and its enemies it was treated as a commercial, not as a war, measure." And Judge Story said: "If it [the Embargo Act of 1807] could be classed at all as flowing from or incident to any of the enumerated powers, it was that of regulating commerce."[2] If Congress may interdict foreign commerce, it is because it is presumably carrying out the policy of a sovereign — the United States — in opposition to or disregard of the policies of other sovereigns to whom it owes no legal duty in the premises. But an embargo on interstate

[1] U. S. *vs.* The Brig William, 2 *Hall's Law Journal*, 255.
[2] Commentaries, sec. 1289.

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commerce for commercial reasons would be a manifest perversion of a power granted to Congress for the very purpose of promoting freedom of intercourse among the states.

By the foregoing discussion not only are we disembarrassed of the notion that the power of Congress to regulate is the same over commerce among the states as it is over that with foreign nations and with Indian tribes, but we are also enlightened by the suggestion that the right to interdict, which seems to inhere in the power to regulate when applied to foreign or dependent peoples, cannot be applied to the states, which are neither foreign nor dependent.

The recent case of France *vs.* United States[1] suggests the question whether Congress, by virtue of the commerce power, may forbid interstate traffic in the interest of morality. This was a suit brought by the government under the Anti-Lottery Act of 1895. This act, designed to complement the act of 1890 forbidding the use of the mails for the transmission of lottery matter, forbade interstate traffic in such matter by any means whatever. The act was in terms an assertion of power to regulate commerce among the states; and it was argued on behalf of France that the subject of lotteries was beyond the regulating power of Congress. The court found it unnecessary, in this particular case, to consider the constitutional question, as the statute did not apply to the acts of the defendant. It has never been decided — or, I think, seriously asserted — that the grant of power to regulate commerce invests Congress with supervision of the morals of the states. It has been supposed, on the contrary, that each state is competent to safeguard its moral welfare by its power of police. If a lottery ticket is not essentially an article of commerce, it goes without saying that a state may prevent its importation. If it is such an article, its importation can still be prevented under the rule derived from Plumley's case ; for it is not to be supposed that the rule of Leisy *vs.* Hardin, already limited in its application to the importation of liquors, should be revived and extended so as to force a state to admit lottery tickets in the absence of federal law to the contrary.

[1] 164 U. S. 676.

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Until the supreme court decides otherwise, it is permissible to entertain the opinion that Congress cannot, under the power to regulate commerce among the states, prohibit the transfer of a commodity from one state to another. But, even if the supreme court should decide that there is a right to confiscate within the power to regulate interstate commerce, it would not follow that the forfeiture clause of the Trust Act is constitutional. Congress cannot deprive persons of property arbitrarily. The government may seize property for non-payment of taxes or confiscate it as contraband of war, but the powers exerted in such cases are unrelated to the power over interstate commerce. If there is a right to confiscate within this power, it cannot be exercised indiscriminately, but only upon articles the use of which is directly and distinctly harmful, and perhaps, according to the principle of the oleomargarine cases, upon articles which may deceive purchasers. A vile book, a lottery ticket and a barrel of sugar in transit from one state to another are equally in course of interstate commerce; yet one need not be learned in the law to perceive that the power of Congress over the necessary of life cannot be coextensive with its power over the other things. It would be difficult, indeed, for the supreme court to affirm the right to seize sugar in transit, not because its use would harm the consumer, but because its sale would benefit the owners who had acquired title to it by methods which Congress, while disapproving, cannot, according to the decision in the Sugar Trust case, condemn.

Finally, even if the supreme court should overcome the successive arguments which have been advanced against the prohibitory clauses of the Trust Act and should decline to pronounce the clauses invalid, a trust lawfully possessed of commodities in the state of production could, nevertheless, market them without federal interference.

It will be noticed that the law authorizes the seizure of articles in transit "owned" by a combination. It does not forbid the sale and delivery of the articles within the state of production. Such a transaction is of state concern, and, according to the decision in the Sugar Trust case, is beyond the reach

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of Congress. Justice Harlan said in his dissenting opinion in that case:

> By the opinion and judgment in this case, if I do not misapprehend them, Congress is without power to protect the commercial intercourse that such purchasing [of goods to be transported from one state to another] necessarily involves against the restraints and burdens arising from the existence of *combinations* that meet purchasers, from whatever state they come, with the threat — for it is nothing more nor less than a threat — that they *shall not* purchase what they desire to purchase, *except at the price fixed by such combinations*. A citizen of Missouri has the right to go in person or send orders to Pennsylvania or New Jersey for the purpose of purchasing refined sugar. But of what value is that right if he is confronted in those states by a vast *combination* which absolutely controls the price of that article by reason of its having acquired all the sugar refineries in order that they may fix prices in their own interest exclusively?

When it is declared that Congress cannot forbid a citizen of a state from going or sending to another state for a barrel of sugar or from acquiring title to it in the latter state, it follows that he may send the sugar where he pleases, without being compelled even to inform federal agents where or of whom he bought it. The sale within the state has divested it of all possible federal interest. The sugar has passed into the hands of a dealer who is not a party to the combination, but, rather, according to Justice Harlan's view, its victim. The dealer and the consumer each benefit the trust by taking its produce; but it would be as absurd to punish the one for selling the sugar as the other for eating it.

IV.

The results of the foregoing discussion may be summarized in two propositions: (1) the power to regulate commerce among the states does not enable Congress to legislate in respect of the production of commodities within a state; (2) the power to regulate commerce among the states does not enable Congress

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to forbid the transfer of commodities lawfully produced within a state to another state, or to authorize their seizure in transit. The first proposition is maintained expressly in the Sugar Trust case, and is the basis of the particular matter decided therein — that Congress cannot prevent transactions looking to monopoly of production within a state. The second is derived from the first by necessary implication; for, as Congress must admit the right of a state to regulate the production of commodities within its limits, it must recognize a right of ownership in commodities lawfully produced, and hence cannot forbid the owner to dispose of them. How absurd to hold that, although Congress cannot prevent a monopoly of sugar production in Pennsylvania and must recognize the sugar as property while in the state and protect it if necessary, it may, nevertheless, order the sugar to be locked up within the state and confiscate it if it shall be exported!

The theory of legislation against industrial trusts is based upon the presumed interest of the state in the conditions of supply and demand, in resulting prices, and in the distribution of wealth and labor. Such legislation is consistent and effective only when it cuts the root of monopoly by destroying combinations which control production. The dissenting opinion of Justice Harlan in the Sugar Trust case, from which I have quoted, shows how essential to the efficiency of federal legislation against industrial trusts is the power to forbid monopoly of production within a state, and how the denial of this power by the majority of the court precludes Congress from abolishing the trusts. Congress, by virtue of its power to regulate commerce, is bound to keep the ways open for the passage of commodities among the states; but what commodities shall be produced, by what agencies, by whom they shall be shipped and at what prices they shall be sold, are matters beyond its competency.

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PART SECOND.

We have now to consider the construction of the Trust Act itself — a question elaborately discussed in the recent case of United States *vs.* Trans-Missouri Freight Association.[1] In this case the court held that an agreement made by the several defendant railroad corporations in respect of interstate freight rates is forbidden by the act. Unless this decision shall be modified in the pending appeal in the Joint Traffic Association case, all such contracts and combinations must remain illegal; and, if the condition is intolerable, relief must be sought from Congress.

The case was argued on behalf of the railroads on two main propositions: (1) that the act of 1890 was not intended to apply to railroads; (2) that, if it did so apply, the agreement in question was not within its purview. The court, standing five to four, denied both propositions in an elaborate opinion written by Justice Peckham.

There is a plain and important distinction between a decision and an opinion — between the point determined and the statement of the reasoning by which the point is reached; and partly because the declarations of so eminent a judge may wake an echo in legislatures and in other courts, partly because all of his positions may not have received the support of every judge who concurred in the result, it will be profitable to examine them with the respect due to the deliverance of an upright and able jurist, yet with the freedom with which one may criticise an official document.

I.

The argument that the act did not apply to railroads was not based on an assertion of lack of power in Congress; for the competency of Congress to regulate these instruments of transportation is unimpeachable. But it was urged that the Interstate Commerce Act of 1887 represented the complete purpose

[1] 166 U. S. 290.

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of Congress in respect of railroads, and that the Trust Act related to other matters. It will not be necessary to consider the reasons which led the court to determine that the act applied to railroads, but there is one point which is worthy of particular notice. On page 313 the court says:

> We have held that the Trust Act did not apply to a company engaged in one state in the refining of sugar under the circumstances detailed in the case of United States *vs.* E. C. Knight Company, 156 U. S. 1, because the refining of sugar under those circumstances bore no distinct relation to commerce between the states or with foreign nations. To exclude agreements as to rates by competing railroads for the transportation of articles of commerce between the states, would leave little for the act to take effect upon.

The argument suggested by this paragraph does not appear to have compelled the conclusion that Congress intended the Trust Act to apply to railroads; yet we must assume that it was influential. The argument seems to be really unnecessary to sustain the conclusion, and it is repugnant to the true principles of statutory interpretation. When a statute appears at first blush to apply to several subjects, it may be argued that the previous exclusion of one or more by the courts entails a greater probability of the inclusion of the remainder. To reach a result by process of exclusion is a valuable and common method of reasoning, and courts should not wholly disregard it. But it may be questioned whether on principle this process is an invariable aid to the interpretation of statutes. Had the Freight Association case been decided by the supreme court, say, five years ago, when the *personnel* of the court was quite different, and had five judges then reached the conclusion that four now approve, could it have been properly suggested in the Knight case that a previous exclusion of railroads from the purview of the act tended to force the inclusion of industrial trusts? Is it not a questionable argument that one decision can, by its priority merely, affect another? It is true that courts must endeavor to discover an intelligent and lawful intention in every statute submitted for inspection, and are bound to effectuate such intention; but I do not understand

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that they are bound to effectuate in some direction every act that cannot be declared void because of unconstitutionality. An act may be drawn so improvidently or obscurely that a court will be justified in declaring it inapplicable through an indefinite series of cases, and leave it, not by decree but by inference, a useless work. The court may not say in any case: "This act is without meaning"; but it may say in each: "This is not its meaning." But if a prior decision may sometimes aid the court in reasoning by exclusion, it is only when the subject excluded may be classified with the one in question. There must be a relation between two things in order to infer the inclusion of one from the exclusion of the other. For example, Congress is competent to legislate on *A*, *B* and *C*, but not on *X*, *Y* and *Z*. By excluding *A* from the purview of an act, we may perhaps make the inclusion of *B* or *C* more probable; but we should not infer that Congress has intended to affect *A* because it has been held that it cannot affect *X*. Yet this false inference is suggested in the opinion.

It was not because Congress did not wish to reach the Sugar Trust that it was placed beyond the purview of the Trust Act. Indeed, contemporary evidence is not lacking that Congress was seemingly anxious to break up this and other industrial trusts. But the court decided that, under a grant of power to regulate interstate commerce, Congress could not interfere with what was held to be simply a manufacture within a state. It is inconceivable that the exclusion of a matter of state concern from the operation of a federal statute should bear on the question as to what subjects of federal concern are actually covered by it.

II.

The Trust Act recites that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal." Counsel for the railroads argued that, if railroads were within the purview of the act, the traffic agreement in question was not, because it was a

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reasonable one. The opinion recognizes the rule that the use of general words in an act does not constrain the courts to a literal interpretation, and that the intent of the legislature may be gleaned from the spirit of the law; but it holds that in this case the general words express exactly the mind of Congress, and cover all subjects within the federal power to regulate interstate commerce. The vital question in this relation is, of course, the definition of "restraint of trade"; for "every" is of no force except in regard to contracts within the definition, and, indeed, in respect of these is merely emphatic. This question will be considered later, and we will take up a suggestion made by the court, not as compelling the literal interpretation of the clause recited, but as adding weight to it.

On page 327 we read:

> Is it [the statutory prohibition] confined to a contract or combination which is only in unreasonable restraint of trade or commerce, or does it include what the language of the act plainly and in terms covers, all contracts of that nature?

And on page 335:

> Considering the public character of such corporations, the privileges and franchises which they have received from the public in order that they might transact business, and bearing in mind how closely and immediately the question of rates for transportation affects the whole public, it may be urged that Congress had in mind all the difficulties we have before suggested of proving the unreasonableness of the rate, and might, in consideration of all the circumstances, have deliberately decided to prohibit all agreements and combinations in restraint of trade or commerce, regardless of the question whether such agreements were reasonable or the reverse.

The trend of these observations is that the court cannot say that Congress, although it contemplates the possibility of reasonable agreements, has not cast a drag-net for all agreements in order to insure the capture of unreasonable ones.

To impute to the legislature a deliberate abdication of the faculty of discrimination which lies at the very root of the ordering of human affairs, is presumably to accuse it. I say presumably, for there may be a condition involving both good

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and evil phases, wherein the latter predominate so overwhelmingly that the legislature, finding it impossible to insure their separation, deliberately attacks the whole condition in order to destroy the evil that is in it. It is submitted that Congress was not confronted with this desperate condition when it passed the Trust Act.

The difficulties attending the making of reasonable rates are undeniably great, and in all probability they will never be overcome to the equal satisfaction of carrier and shipper; nevertheless, our courts, and especially the Supreme Court of the United States, have declared that the reasonableness of a rate is a matter for judicial determination. Legislatures have taken their cue from the courts and have incorporated terms of discrimination in statutes dealing with transportation charges. The Interstate Commerce Act prescribes that railroads shall not accord any *undue* or *unreasonable* preference or advantage nor make *unjust* discriminations, and that rates shall be *reasonable* in themselves. If this act has broken down, it is not because of these qualifications. If these should be stricken out and the act be then construed according to the reasoning of the Trans-Missouri opinion, the railroads would break down.

The Trust Act, as interpreted by the supreme court, imposes an additional definition of a *reasonable* rate — namely, that it shall be one reached by the independent action of the company offering it, and not by agreement with a competing road. Possibly a severe logician, querying how a rate reasonable in itself according to the Interstate Commerce Act becomes unreasonable under the Trust Act, might be forced to conclude that in the latter act Congress really distinguished between reason and policy, and declared that a rate reasonable in itself becomes impolitic if reached by agreement. Or the explanation might be that Congress discarded the Interstate Commerce Act as a failure and, in despair of enforcing rates reasonable in themselves, declared arbitrarily that rates fixed by agreement are essentially unreasonable. Or one may account for the position imputed to Congress by saying that the task of determining judicially a reasonable rate for two or more rail-

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roads is much greater than in the case of a non-competitive rate, because it is difficult to find a common rate-making basis for several corporations. Yet, from whatever side we approach the question, the conclusion seems inevitable that, according to the supreme court, Congress has adjudged the rate determined by unchecked competition to be the only reasonable one. But a large proportion of our freight is carried at non-competitive rates, and great sections of country are served by single railroad systems. Therefore, if Congress asserts that the rate fixed by competition is the only reasonable one, it stamps a large share of our interstate freight charges as invincibly unreasonable.

In any view of the question, it seems to me that the court need not have construed the act as attacking all agreements because of an assumed difficulty in excepting such as are reasonable. Further, it is by no means clear that the court has not suggested, in the paragraph quoted, the impossibility of attaining reasonable rates on rival roads save through competition. If this is the correct statement of an economic proposition; if neither the state nor the corporation can evolve a plan which shall bring us approximately to the desideratum of open, uniform, fairly stable and reasonable rates between competitive points; if openness, uniformity and stability are so antagonistic to reasonableness that we must choose between them, — a dilemma is manifest.

III.

It was argued on behalf of the railroads that the economic benefits of competition in ordinary business could not be predicated of railroad transportation — that the public would be better served by agreements for reasonable and stable rates than by a demoralizing struggle for traffic; and the court was asked to hold that Congress could not be presumed to have intended to force the railroads into disastrous competition. The court not only declined to sanction the economic proposition and the inference suggested, but declared that the peculiarity of railroads, so far from placing them beyond the act,

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made them especially subject to its provisions. This declaration involves a conclusion of law based upon a novel definition of a railroad company; and, in my judgment, neither the definition nor the conclusion is in harmony with the settled law.

Justice Peckham says, on page 321 of the Trans-Missouri opinion: "It cannot be disputed that a railroad is a public corporation . . ."; and on page 332: "It must also be remembered that railroads are public corporations organized for public purposes." This description of railroad companies as public corporations is a substantial departure from the accepted view of the status of these associations. The railroad is by far the most prominent instrument for facilitating intercourse, but it is not the only one. The canal, the turnpike, the toll bridge are in the same class with the railroad, which they long preceded. The status of the promoters of these undertakings has therefore been the subject of judicial determination for a very long period, and we will show that Justice Peckham's description is not in accord with the prevailing view.

Chancellor Kent writes of canal, bridge, turnpike and railroad companies: "The uses may, in a certain sense, be called public, but the corporations are private, equally as if the franchises were vested in a single person." [1] Peirce, Morawetz, Elliott and other writers agree in holding that railroads are *not* public corporations. This consensus of opinion is founded, of course, upon the decisions of the courts, and — what is especially pertinent — upon decisions of the Supreme Court of the United States in many cases. Chief Justice Taney said of the act incorporating the proprietors of the Charles River Bridge: "It is the grant of certain franchises by the public to a private corporation, and in a matter where the public interest is concerned"; [2] and this definition is applied to railroads in Richmond, Railway *vs.* Louisa Railway. [3] Again, in Railroad *vs.* Peniston [4] a railroad is described as "a private corporation, though existing for the performance of public duties." In Railroad *vs.*

[1] 2 Commentaries, 275.
[2] Charles River Bridge *vs.* Warren Bridge, 11 Peters, 544.
[3] 13 How. 81. [4] 18 Wall. 32.

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Iowa[1] a railroad company is said to be "engaged in a public employment affecting the public interest"; and in Cherokee Nation *vs.* Railroad Co.[2] a railroad is described as "a public highway established primarily for the convenience of the people and to subserve public ends."

We may discover in the above definitions a progressively greater stress upon the public side of the corporations. This is due, without doubt, to the increased power of these private organizations, which makes it proper to remind them of their public obligations. But all the definitions are consistent with the prevailing conception of a railroad company — a private corporation enjoying great powers by the favor of the state and owing important duties to the public. This conception admits the right of the state to compel railways to transport all comers at reasonable rates, to take proper measures for safety, *etc.* It is broad enough to accord with any governmental action in respect of railroads which may be constitutionally taken. "Public corporation" has acquired a fairly definite meaning in our jurisprudence — an organization public in origin, in purpose and in administration, and hence a part of the state. A railroad company is not in this category. It is a voluntary association of persons who ask and receive necessary aid from the state in order to accomplish their purpose. The purpose of the incorporators is private — the collection of remunerative tolls. The purpose of the state is public — the opening of a way for transportation which the state might undertake itself, but which it prefers to have undertaken by private parties.

The important definitions of our supreme court have an effect far beyond the forum. They are guides to political thought and action, and are likely to affect the trend of legislation. In defining a railroad as a "public" corporation, the court contemplates, without doubt, the safeguarding of all those private rights which the law of the constitution, as now understood, assures to the incorporators; but may not the radical change in the point of view beget a change in the legal status of rail-

[1] 94 U. S. 155 (The Granger Cases).
[2] 135 U. S. 641.

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roads, which the court, as composed at present, could not contemplate with satisfaction?

Whatever may be thought of this definition of a railroad company, the conclusion which appears to be drawn from it is untenable. The conclusion is that the contracts and combinations of railroad corporations are not, like other contracts of the class under discussion, invalid only when in unreasonable restraint of trade, but are invalid by reason of the status of the parties. Said District Judge Shiras, in his dissenting opinion on the Freight Association case at circuit:[1]

> The failure to recognize the distinction between private enterprises carried on by individuals or private corporations, and public duties performed through the agency of public corporations, in my judgment has misled the court in reaching the conclusion announced in the majority opinion. As applied to private associations, the modern authorities undoubtedly sustain the proposition therein laid down, "that it is not the existence of the restriction of competition, but the reasonableness of that restriction, that is the test of the validity of contracts that are claimed to be in restraint of trade"; but that, in my judgment, is not the test of validity when the action of public corporations relative to public duties is brought in question.

It is to be noted that this argument is not founded on the words of the act, which neither proclaim nor suggest any such distinction as is here made. The conclusion is a matter of pure law and can be justified only by its reasonableness. But Judge Shiras's proposition seems to be approved substantially by the opinion of the supreme court.

Now, it cannot be denied that an unreasonable restraint of trade in the matter of transportation may work a more serious public injury than a like restraint in any other line of business, because the freight rate is a factor in the price of every commodity. The court might well have said, therefore, that a combination of railroad companies should be subjected to a peculiarly severe scrutiny, because of its evil possibilities. But the court, dominated, it would seem, by the idea of the power of railroads for evil, has intimated that, while contracts

[1] 58 Fed. Rep. 85.

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in restraint of trade may be valid when made by ordinary parties, they must be invalid when made by railroads. Where is the authority for drawing a distinction between valid and invalid contracts in restraint of trade, based wholly upon the status of the parties? The act, as I have said, does not warrant — indeed, I do not think it permits — the distinction. It names *all* persons and corporations, and such as are within its purview must stand on the same footing. Authority for the distinction cannot be derived from the common law; for they who expound this law do not ask, Who have made this contract? but, Is this contract in unreasonable restraint of trade? The common law does not exert its remedial power until an unlawful act furnishes the occasion, and it holds that only to be unlawful which is unreasonable in the sense of being injurious.

Were the opinion of the court of merely federal concern, the distinction might be considered of little practical importance; for, as a matter of fact, the parties engaged in interstate commerce, as it is defined by the courts, are more than likely to be engaged in a business of peculiar public obligation — the business of a common carrier. But beyond the limited federal jurisdiction there is the broad field of the states, wherein trade and commerce represent, not merely one phase, but the whole sum of human activity applied to the production, acquisition and distribution of property. In this field the judgments of the supreme court, though not authoritative, are influential; but it is to be hoped that courts which have hitherto drawn upon the accumulated wisdom of the common law for their judgments in respect of contracts in restraint of trade will not be persuaded by the novel doctrine propounded in the federal court.

IV.

Chancellor Kent says:

The common law includes those principles, usages and rules of action applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature.[1]

[1] Commentaries, I, 471.

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The common law is generally accepted as the basis of jurisprudence in the several states of the Union, and in some of these it is expressly recognized in the constitutions; but, strictly speaking, there is no common law of the United States. The whole body of federal law is made up of the constitution and the acts of Congress. The existence of the common law is recognized, however, in the Eighth Amendment; and the body of law contains many rules and terms couched in common-law phraseology and plainly derived from the older jurisprudence. Should federal judges go to the common law for the meaning of these terms? Said Chief Justice Marshall: "For the meaning of the term *habeas corpus* resort may be unquestionably had to the common law";[1] and Justice Clifford said: "In the construction of the laws of Congress the rules of the common law furnish the true guide."[2] These observations indicate that respect for and reliance upon the common law which has usually marked the rulings of federal judges.

This wholesome precedent so far influenced the court in the Freight Association case that it sought a common-law buttress for the definition of contract in restraint of trade which it obtained from the Trust Act — namely, an agreement creating a restraint in fact, whether reasonable or unreasonable. In the opinion we read:

> A contract may be in restraint of trade and still valid at common law. Although valid, it is nevertheless a contract in restraint of trade, and would be so described either at common law or elsewhere [page 328].

Chief Justice Parker said, in the leading case of Mitchell *vs.* Reynolds:[3]

> In all restraints of trade, where nothing more appears the law presumes them bad; but if the circumstances are set forth, that presumption is excluded, and the court is to judge of those circumstances, and determine accordingly; and if upon them it appears to be a just and honest contract, it ought to be maintained.

[1] Bollman's Case, 4 Cranch, 75.
[2] Rice *vs.* Railroad, 1 Black, 374.
[3] 1 P. Wms. 197.

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In this passage Chief Justice Parker plainly describes restraints of trade as both valid and invalid, and textually supports Justice Peckham's statement. But mark how differently the American and the English judge handle their statements. The former takes a phrase descriptive of fact and announces it as a conclusion of law — that is to say, that all contracts which in fact restrain trade are opposed to public policy. The latter states a fact and then proceeds by a process of differentiation to a conclusion. Now, it may not be incorrect to describe all contracts which, as a matter of fact, restrain trade as being in restraint of trade, but it is incorrect to draw a common-law conclusion merely from this description; for the only "restraint" which is material at common law is that which is denounced because of its unreasonableness. For confirmation of this position we may appeal to Justice Peckham himself, when, as judge of the New York Court of Appeals, he delivered the opinion in Matthews *vs.* Associated Press,[1] which Justice White cites most effectively in his dissenting opinion. Said Judge Peckham, in the Matthews case: "The courts do not go the length of saying that contracts which they now would say are in restraint of trade are, nevertheless, valid contracts . . ." (page 340); and again: "Such an agreement would not be in restraint of trade, although its direct effect might be to restrain to some extent the trade which had been done" (page 341). These sentences are full of the spirit of the common law. They recognize that distinction between reasonable and unreasonable applications of sound principles which courts have always striven to enforce, in order to make the common law a help and not a hindrance to the proper conduct of affairs. The common law, rooted as it is in a social order of comparative simplicity, has not invariably proved an adequate guide in the changing and progressively complex conditions of later times. Equity has been evoked to mitigate some of its rigors, and legislation to correct defects, close gaps and meet novel conditions. But it is noteworthy that, in respect of contracts in restraint of trade, the theory of the common law has generally

[1] 136 N. Y. 340.

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sufficed to allow both a reasonable freedom of trade and a reasonable freedom of contract. Courts have always insisted that trade shall not be restrained to the public detriment, but the definition of detriment has always depended upon the circumstances of the case and the trade conditions of the time. I know of no opinion, and there certainly is none of authority, which asserts that the existence of a restraint in fact is proof positive of a public injury.

It must be remembered that the supreme court, in the Freight Association case, was dealing with a comparatively limited field of business activity — commerce between the states and with foreign nations. Yet its reasoning, if sound, should be applied in the larger field of general trade — the field which the state courts cover within their jurisdictions. Let us suppose that the New York Court of Appeals is called upon to construe a statute couched in the terms of the Trust Act. The common-law distinction between reasonable and unreasonable restraints has always been maintained in this state. For example, one may bind himself for a consideration to abstain perpetually from engaging in a particular trade or calling, provided that the circumstances do not show a public injury.[1] In the Freight Association opinion, Justice Peckham says with reference to such cases:

> A contract which is the mere accompaniment of a sale of property, and thus entered into for the purpose of enhancing the price at which the vendor sells it, which in effect is collateral to such sale, and where the main purpose of the whole contract is accomplished by such sale, might not be included within the letter or spirit of the statute in question. [Page 329.]

But why should such a contract be excluded, if it is unreasonable in fact and therefore a public injury? And why should it be included, if it is reasonable in fact and therefore harmless? Justice White thus refutes the above argument:

> The asserted exception not only destroys the rule which is relied on, but it rests upon no foundation of reason. It must either result

[1] Diamond Match Co. *vs.* Roeber, 106 N. Y. 473. Discussed *supra*, p. 627.

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from the exclusion of particular classes of contracts, whether they be reasonable or not, or it must arise from the fact that the contracts referred to are merely collateral contracts. But many collateral contracts may contain provisions which make them unreasonable. The exception which is relied upon, therefore, as rendering possible the existence of trade to be restrained, is either arbitrary or it is unreasonable. [Page 352.]

To return to the New York court: Should it approve the reasoning of the supreme court and follow it to its logical conclusion, it must declare that the legislature intended to treat as misdemeanants parties to contracts and combinations hitherto lawful. The doctor who sells his practice for a price increased by his covenant not to practice within certain limits, the workingman who joins a union for the purpose of bettering his condition, must be fined or go to jail, if the law is enforced impartially.

I conclude that the opinion does not make good the claim that its broad definition of contract in restraint of trade is in harmony with the common law. Nor does it appear that the court really relied upon the common law to support its definition, for we read on page 334 of the opinion:

> The plaintiffs [the United States] are, however, under no obligation in order to maintain this action to show that by the common law all agreements among competing railroad companies to keep up rates to such as are reasonable were void as in restraint of trade or commerce. . . . But, assuming that agreements of this nature are not void at common law and that the various cases cited by the learned courts below show it, the answer to the statement of their validity now is to be found in the terms of the statute under consideration.

Herein we find the line of reasoning which leads the court to its conclusion. The "contract in restraint of trade" of the Trust Act is deemed to be coincident with the phrase of the common law in form only. In reality it is something quite different. It is a phrase without the support of a long line of decisions to explain its meaning — a phrase which appears first in the Trust Act and only received its positive and authoritative definition in the Freight Association case. This declaration of

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independence of the common law is doubtless within the constitutional powers of the supreme court, but it marks a departure from customary ways.

V.

Upon reviewing the foregoing arguments and propositions of the Freight Association opinion, I should eliminate one as not necessary to support the decision. The proposition that the common-law meaning of "restraint of trade" covers reasonable restraints is not really relied upon, as we have seen, and it is inaccurate in itself. A second feature of the opinion — the assumption that Congress may have contemplated reasonable as well as unreasonable restraints and yet deliberately prohibited each — is ill conceived; for it imputes to Congress an action which is, to say the least, improper and possibly arbitrary. Of more importance is the suggestion that a railroad is a public corporation, and is therefore especially within the purview of the act. This idea seems to have exerted a decided influence on the result; but the definition is inaccurate and likely to mislead, and the distinction between contracts in restraint of trade based on the character of the parties rather than on the nature of the restraint, is not only untenable at common law, but contrary to the comprehensive words of the statute itself, which put all persons and corporations upon the same footing.

I should say that the proposition really underlying the decision is simply this: that the Trust Act is to be interpreted literally. Yet the rule of literal interpretation here expressed is not that which governs judges influenced by the common law, but suggests, rather, a bald literalness which does not savor of the forum. When the Trust Bill was introduced in the House the chairman of the judiciary committee said:

> Now, just what contract, what combinations in the form of trust, or what conspiracies will be in restraint of trade or commerce mentioned in this bill, will not be known until the courts have construed and interpreted this provision.

Congress is now informed of the effect of its law. It is informed that it says to all persons and corporations engaged

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in interstate or international commerce who may contract or combine with reference to their business: "You cannot plead that your methods and objects are reasonable, that your association does not injure the public interest in commerce. We assume at the outset that your contract or combination is essentially vicious; we prescribe that the rule of unchecked competition shall govern those engaged in commerce between the states and with foreign nations."

In Part First of this essay I endeavored to show that the "commerce among the states" which Congress is empowered to regulate, and which may be affected by anti-trust legislation, does not cover the production and sale of commodities, but is limited to interstate transportation. All corporations and persons engaged in facilitating intercourse between the states are subject, therefore, to the Trust Act. The owners of railroads, telegraphs, shipping lines, *etc.*, are but a fraction of the host engaged in interstate commerce: the main body consists of hundreds of thousands of persons who exert the intelligent physical force without which intercourse would be impossible. Engineers, trainmen, telegraphers and freight handlers form parts of this body; and in each part the individuals are united more or less closely in associations, intended to promote the welfare of their members, which operate to restrain trade in the broad sense approved in the opinion of the court. Says Justice White in his dissenting opinion:

> It has been held in a case involving a combination among workingmen, that such combinations are embraced in the act of Congress in question, and this view was not doubted by this court *In re* Debs, 64 Fed. Rep. 724, 745–755; 158 U. S. 564. The interpretation of the statute, therefore, which holds that reasonable agreements are within its purview, makes it embrace every peaceable organization or combination of the laborer to benefit his condition either by obtaining an increase of wages or diminution of the hours of labor. [Page 356.]

The reasoning which has brought all railroad agreements within the act must cover all the combinations of workingmen engaged in interstate commerce, without regard to their character and

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objects. This conclusion will be strenuously opposed, but I can see no escape from it, if the law is to be enforced without sentiment and prejudice. What ground is there for holding that an engineer who pilots a train carrying goods from one state to another is not engaged in interstate commerce, while the corporation which employs him is so engaged? That his agreement with his comrades is not, while that among his employers is, in restraint of trade? If the persons employed in this work are not engaged in interstate commerce, what are they doing? If it be answered that they are simply running trains under orders, careless of their freight and destination and interested only in receiving their pay, the same interest may be imputed to the corporation, which seeks only payment for services. It is evident that they who afford facilities for intercourse are engaged in commerce; and the facilities for railway transportation, for example, are afforded by the stockholders who own the road, the officials who administer it and the employees who operate it.

VI.

Section 1 of the Trust Act runs thus:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

In the syllabus prefixed to the opinion of the court in the Freight Association case we read:

> The prohibitory provisions of the said act of July 2, 1890, apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation; and are not confined to those in which the restraint is unreasonable.

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Here we have the prohibition and its application; and it is the plain duty of the government to prosecute all persons whose contracts or combinations appear to fall within the act. It is clear that Congress should at least, and at once, so amend it as to relieve the government from the duty of denouncing parties to reasonable contracts as criminals. If, when this is done, Congress is not satisfied with the position of railroads under the act, it may deal with them separately and declare its purpose either in an amendment to the Interstate Commerce Act or in a special statute.

I do not suggest a plan for bringing the railroad problem as near to the point of solution as so complicated a question is likely to attain, but I call attention to certain conditions which must be appreciated before any just and efficient plan can be devised.

On July 30, 1895, the railway system of the United States comprised 180,657 miles of road. The total capitalization was over ten billion dollars, divided between stock of the par value of $4,961,000,000 and a funded debt of $5,385,000,000. During the preceding year over seventy per cent of the stock paid no dividend, and over thirteen per cent of the bonds no interest. These figures, taken from the report of the Interstate Commerce Commission for 1896, show that railroads are by no means generally profitable to investors. It may be said that the bad condition of railroads is caused largely by vicious and improvident financiering and administration; but this does not alter the all-important fact that the railroads carry about five hundred million persons and about seven hundred million tons of freight annually, afford a livelihood to millions of people, and represent the legitimate investments of hundreds of thousands of persons. Evidently, the railroad corporation should not be treated as a public enemy; nor, on the other hand, can it claim the consideration due to a public benefactor. It represents simply the greatest business in the country, and performs public services second in importance only to those of government itself. Hence the private interest in railroads must be protected, not merely as private property, but in

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order that the public interest may be well served; and that plan only will be satisfactory which accords proper recognition to each interest.

The legitimate private interest in railroads is in running them at a profit upon the capital invested. On page 332 of the Freight Association opinion Justice Peckham says of railroad companies: "They all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders." We may go further and say that, as between public duties and any dividends, the duties must prevail; for the earning power of a railroad so depends on its reason for existence, the character of its financiering and the method of its management, that it would be absurd for the public to condition the assertion of its rights upon the ability to earn dividends. Hence railroads, whether solvent or insolvent, must perform their obligations to the public. But, though they have no paramount right to earn dividends, they have the right to demand that their obligation shall not be defined so unreasonably as to deprive them of profits which they might otherwise earn by prudent management. In fine, innocent property cannot be confiscated; and so the courts have held.

There is an illegitimate private interest in railroads which manifests itself in various ways — in the building of roads to sell or to promote land speculation, in ruinous paralleling, in administering roads for the profits of management, in disregarding the fiduciary obligation which should govern directors and officials as representatives and agents of the stockholders. In such cases investors are victimized and the public is injured by the demoralization of an undertaking which must be well managed in order to afford the best facilities. I believe that had a tithe of the legislative energy which has been directed against railway rates been exerted to reform the laws under which roads are built and managed, the railway problem would be far less complicated. Even now much may be done in this direction; but this is generally a matter for state rather than federal action.

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The public interest in railroads is too often voiced in a demand for lower rates for transportation. I do not mean low, but, literally, lower rates — charges constantly depressed by law. If mere cheapness of transportation is the true interest of the public, the sooner the railroad corporations join with the Populists in demanding government ownership, the better; so that they may sell now at a price satisfactory in comparison with what they would receive after the market value of their property has been reduced by oppressive legislation. In fact, safe and speedy transportation is the legitimate primary interest of the public; and it is only their secondary interest that the charges shall be as low as is consistent with the maintenance of the service and the return of a fair profit on the investment — that rates shall be reasonable.

The question suggested by the construction placed upon the Trust Act by the supreme court is: Does public policy demand that the reasonable rate shall be that which is fixed by unchecked competition? We say that "competition is the life of trade"; we may go further and declare it to be the law of nature. Yet the simplest social organization is a protest against the unrestrained competition of savagery, and the most perfect society is that which best controls the selfish impulses of its members. Unchecked competition is not, then, the accepted rule for the conduct of affairs in general; and in the affairs with which we are concerned — trade and commerce — we find many instances of approved restraint in usage and custom and in legislation. It cannot be said that these instances are the product of a consistent theory, but they indicate a constant struggle between the primitive law of competition and the policy of restraint. We may conclude, therefore, that there is no warrant in precedent or theory for prescribing unchecked competition as the invariably just and practicable rule of trade.

In the Freight Association case the government insisted that Congress had prescribed the salutary rule of competition in respect of railroads; and counsel for the railroads declared with equal vigor that unchecked competition was so plainly inimical

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to public and private interests that Congress could not be supposed to have prescribed it. Now, whatever may be thought of the decision in the matter of statutory construction, it is evident, I think, that Congress owes to the country a careful investigation of the controverted question. For, while it might be admitted that in point of law — that is, according to the rules of statutory construction — Congress had prohibited railroads from making rate agreements, reasonable or otherwise, in point of fact, the matter was not deliberately considered. This should now be done; and if it shall be found that the public interests demand unrestricted competition — well and good. It may appear, however, that uniformity and stability in rates are desirable as well as reasonableness, and that these qualities can be combined only by means of traffic arrangements involving a certain restraint of trade that is not unreasonable according to the common law. In this event, let the railroads be permitted to make such arrangements, provided that their conduct in respect of past and present agreements has been such as to warrant the belief that they can be trusted to abide by them. But if, as has been charged, traffic agreements have proved ineffective because they have been persistently violated by weak and unscrupulous parties, let them be subjected to such governmental supervision as will tend to insure their observance.

VII.

The Trust Act, as construed by the supreme court, is a notable type of legislation much in vogue — penal laws which, embodying a germ of wholesome restraint, have at the same time a range so sweeping as apparently to include persons whose acts the legislature would never deliberately stigmatize as criminal. A common apology for such legislation is the difficulty of separating the sheep from the goats in the text of the laws, and the confidence that the courts will discriminate. This excuse is usually a confession of weakness; and in the Freight Association case the supreme court, declining to shoulder the responsibility, has taken Congress at its word.

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Precision in defining offenses is a fundamental principle of the criminal law, and it has been asserted that the construction placed upon the Trust Act by the supreme court is the only one consistent with this requirement. It is argued that there can be no doubt as to the crime and the criminal when Congress denounces *all* persons who make *any* contract in restraint of trade; whereas, if only unreasonable restraints were attacked, there would be an evident lack of precision, since the description is indefinite on its face. This argument is defective. Absolute precision, a text so convincing that he who runs may interpret, is not required. In point of legal sufficiency that is certain which can be made certain by the scrutiny of the trained jurists of the bench. This very Trust Act cannot be understood until the courts have at least answered the questions: What is meant by "restraint of trade"? Who are engaged in interstate commerce? Twice have these questions been propounded to the supreme court, and the end is not yet.

Moreover, if the argument cited is sound, it proves too much. It suggests the intolerable proposition that the innocent must suffer for the sake of a precision of statement that will certainly include the wrongdoer. Justice is the foundation of law, not precision; and if our lawmakers can find no way to prevent certain economic evils, save by an indiscriminate denunciation of innocent and guilty, they must accept the conclusion which has always forced itself upon legislators whose earnestness is enlightened by intelligence — that the power of the state has its just limits, and that one of these is overpassed when the state strikes at a great and generally beneficent principle in order to destroy a harmful growth. Freedom of contract may be abused to the public injury; yet the abuse must be endured, if it can be corrected only by measures which will impair desirable freedom.

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THE GOVERNMENT AND THE NEWSPAPER PRESS IN ENGLAND.

THE purpose of this article is to trace the change which, during the last century, has come over the connection of the government with the newspaper press, so far as concerns the use of the press by the government and the attitude of the government towards newspapers, newspaper proprietors and journalists. For this purpose the beginning of George III's reign may be taken as a starting point; for from the first and second decades of that reign may be dated the beginnings of the modern daily press in England. Between 1760 and 1780 there came into existence in London numerous daily journals, of which several survived until the middle years of this century, and one, the *Morning Post*, still survives and flourishes.

During that period the daily journals began really to be newspapers. In the second decade of George III's reign they were reporting the debates in the House of Commons and the House of Lords under the same constitutional conditions as at the present time; and that these Parliamentary reports were full, fair and adequate is shown by the frequent references to them as such in Walpole's letters to Mann, and in other letters and diaries covering the first half of the Georgian era. The law courts were being reported, as were the quotations on the stock exchange and in the produce markets. News from the provinces was being collected and published with more or less system, and some attention was being given to foreign affairs. In short, by about 1770 the news letters were at an end and the era of the modern daily press had begun. Newspapers were commercial enterprises, conducted by responsible business men on commercial principles, and drawing their revenues from sales and advertising patronage; and there was no place left for the ephemeral journals like the scores which had come and gone between the Commonwealth and the American Revolu-

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tion — the one-man journals which had been so largely made use of by the government during the reigns of Queen Anne and the first two Georges.

Soon after printing was introduced into England the government turned the new art to their account; and certainly from the time of the Commonwealth to the eve of the Reform Act of 1832 the government usually had in their service some official whose work it was to superintend the press and through it to influence public opinion. Milton and Needham acted in this capacity during the Commonwealth. Sir Joseph Williamson was partly in charge of the press during the Restoration. Defoe took up the work after the Revolution. Swift followed Defoe, and in his turn was followed for a while by Paxton, who also did much borough-mongering for Walpole. Mallett and Roberts, among others, were engaged in writing for the treasury when Newcastle was supreme; while during the long reign of George III there was a succession of managers or supervisors of the press in behalf of the government. The list includes Weston, who discharged some of the duties in the early years of the reign; James Macpherson, of Ossian notoriety, who took up the work when Lord North was in power; Rose, who was doing some of it in Pitt's time; and Croker, who began it in the second decade of the nineteenth century and continued it long after George III was dead — in fact, until the end of the last Tory administration which preceded the Reform Act.[1] Weston was under-secretary for foreign affairs, when, in 1763, he seems to have been acting as an intermediary between the government and the press. Macpherson, on the other hand, was, about 1767, specially engaged to act as the treasury editor. He had been in the Western provinces and the West Indies from 1764 to 1766, as surveyor-general of the Western provinces, at a salary of £200 a year; and when he got back to London this salary was con-

[1] From the colony of Maryland at the Revolution of 1776, Chalmers, the Tory, went as a writer to the aid of George III, and he wrote in behalf of the government until the time of the French Revolution. But Chalmers's work went chiefly into pamphlets and books published in the interest of the government: he seems to have had no close connection with the newspaper press.

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tinued on the understanding that he should become a political writer in the interest of the government. Rose, who among his other services established the *Sun* in 1793 in the interest of Pitt, was secretary to the treasury. His partner in the newspaper enterprise was Francis Freeling, secretary of the post-office, then a department which could do much to help a government paper or to put obstacles in the way of opposition or independent journals. Croker was secretary of the admiralty during the years he was busied with the press, and he is nearly the last of the long line of press managers in the interest of the government reaching back to Milton and Needham. According to Greville, work similar to that of Croker was done for the Whigs, when they came into power in 1831 and for a few years after the Reform Act, by Le Marchant. His principal activity was in connection with the *Morning Chronicle;* but the conditions with regard to the press were changing again when the Whigs were in power, and Le Marchant can hardly have had the same opportunities that Croker enjoyed for carrying out this work.[1]

The new era in English journalism had not quite begun when George III came to the throne. One-man journals of the old school were still in existence. Smollett in 1762 was conducting *The Briton;* while Dr. Francis, the father of Sir Philip Francis, and Arthur Murphy were of the group of treasury writers carried over from the previous reign. It is remarkable how many of these government writers came from Scotland and Ireland and how many of them were of the church. Francis was of the church, and he received as part payment for his services the appointment as chaplain to Chelsea Hospital. Murphy took his pay in various ways. On one occasion he was given an ensigncy in a regiment by Lord Holland in return for his journalistic services. He sold it, and, some scandal arising out of the sale, the transaction led to the

[1] From Croker's own papers, from Scott's Life and Diary, from Lockhart's Life, from Coleridge's Letters and from Daniel Stuart's Reminiscences, it is almost as easy to realize Croker's work in connection with the newspapers as it is to trace that of Milton or Swift in managing in behalf of their governments the journals of their day.

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establishment of the rule of advertising army appointments and promotions in the *London Gazette* — a rule which is in force to-day as regards all appointments in the army and the navy and to the civil service.

While the old form of journalism lasted it was an expensive one for the government, for the one-man journals made no pretense of paying their way. From 1731 to 1742 over £50,000 were paid out by the Walpole government to authors and printers of *Free Britons*, *Daily Courants*, *Gazetteers* and such journals; and in the *Anecdotes of Chatham* there is a statement that during the first three years of the reign of George III £30,000 were expended on the writing and printing of similar publications. By 1763 the daily papers of the new type — newspapers, as distinct from papers printed solely to serve the purpose of the government — were being used by the government. Among the Dartmouth Manuscripts there is a letter from Lord Halifax, written in July, 1763, to Edward Weston, who was then under-secretary for foreign affairs, asking him to contradict a story which had appeared in the *North Briton* concerning a pension charged on the Irish establishment. With the contradiction there was also a letter, which Halifax desired should be printed in the *Whitehall Gazette* and the *St. James's Gazette*, and also in the *Public Advertiser* and the *Daily Gazetteer*, which were then morning newspapers. That the statesmen of this period were quick to note the change which was coming over the press and the extended usefulness of newspapers is shown by a letter in the Townsend Manuscripts, written by Charles Townsend to the Duke of Newcastle. It is dated April 30, 1764, and suggests that

> to gain upon the minds of the people, a daily paper upon the plan of one of the present prints should be set up and circulated diligently, but quietly; and two good pens should be employed to write from material suggested by men of knowledge, and subject to their inspection.

The change from the old to the new system was complete when Macpherson, after his return from the West Indies,

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settled down to the work of a treasury editor. The development of newspapers, according to Mr. Lecky, had then put an end to or absorbed the literature of detached periodical essays, which during the three preceding reigns had been so considerable, and the best periodical writing was now finding its way into the newspapers. But another quarter of a century was to elapse before the editorial article was to become a feature of the daily press: until then political opinions were expressed in the news which the editors chose to publish, and especially in the "Letters to the Editor" which were admitted to the columns of the papers.

It was therefore for many years the work of the treasury editors to watch this correspondence, to write letters in reply, and to secure their insertion in the daily press. Macpherson was engaged in this work, and over such signatures as "Musæus" and "Scævola" he wrote in reply to "Junius." He also exercised a general supervision over the newspapers. His duty was to prevent attacks upon the government, as well as to write regularly in their defense. The pay for this work in Macpherson's case was comparatively good, as before he had been long engaged in it his salary was increased from £200 to £600 a year. By 1770 the treasury had organized a systematic supervision of the press; for at the trial of Almon, of the *Political Register*, in that year, it was revealed that there were then two "messengers of the press" employed by the government on salary to purchase the newspapers and to note their contents. If Daniel Stuart's *Reminiscences* are to be relied upon, this systematic oversight of the press was continued as late as the time when Coleridge was writing for the press.[1]

The new style of journalism necessarily involved more adroit

[1] Stuart was owner of the *Morning Post* and the (evening) *Courier*. He states that once, on information obtained from Coleridge, he wrote for the *Courier* a paragraph regarding the conduct of the Duke of York. Early copies of the *Courier* were at this time sent to the government offices; and before the rest of the edition could be printed on the hand presses of that period, messengers appeared at the newspaper office with the demand that the entire edition should be cancelled.

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management and more watching than the old. A writer like Smollett — to go back no further than George III's reign for an example — was not likely to write anything which would involve the canceling of an entire edition of his journal; and when Swift was in charge of the press he had the government printers and writers so closely under his eye that nothing could slip into print contrary to his instructions.

From the American Revolution to the French Revolution the use of the press can be traced in the *Letters of King George to North*, in Walpole's *Letters*, and in the Miles *Correspondence*. The *Letters to North* afford some glimpses of the connection which then existed between the treasury and the newspaper editors who were in its pay. Bates was the most notorious of these. According to the Walpole *Letters*, Bates's allowance was £400 a year. Whatever it was, it was grudgingly paid by George III. The king, who was in these matters exceedingly business-like, had a poor idea of the value of Bates's work and of Bates himself; and, having at this time so many other uses for the money at his disposal for electioneering, for managing the House of Commons and for influencing public opinion, he paid with but ill-grace the allowance with which Bates was rewarded.

The Miles *Correspondence*, which covers the period of the French Revolution, shows that, as in Macpherson's time, the treasury-paid editors were expected to keep out objectionable articles, as well as to uphold and defend the government, and that there was a close connection between the editors and the treasury. If the newspaper editors were in doubt as to the insertion of a letter from a correspondent, the communication was carried to the treasury and was passed upon by the official who was superintending the press. In this way the government saved itself from criticism and oftentimes from exposure; and was also enabled to approach and endeavor to win over to its side writers who were new in the field. From the Miles *Correspondence*, it is evident that when Rose was at the treasury the newspapers were closely watched. Efforts were made to ascertain the writers of the letters addressed to the

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editors which were published anonymously, and when these efforts were successful, as in the Miles case, they were followed by overtures to accept service under the government.

Towards the close of the century there is ample evidence that the government was making use of the provincial press. Many of the English provincial cities then had their local weekly newspapers; and, as the municipal records and local histories of these old places show, the old corporations and municipal cliques had lost no time in getting the newspapers on their side. This usually meant the side of the local vested interests, and also the side of the government — the side which was opposed to all reform. Only slowly and with much caution had the provincial newspapers concerned themselves with national politics. As late as 1745 an editor of a York paper was punished by the House of Commons for printing a news paragraph narrating its proceedings; and as late as 1761 a general election passed with only the slightest allusion in the Liverpool journals, although Liverpool, with its large freeman electorate, was a centre of much political activity. As early as 1733 candidates for Parliament had used the provincial newspapers for publishing their addresses to the freeholders and to the electors in the cities and boroughs. But until towards the end of the eighteenth century the conductors of the provincial newspapers, who as a rule were master printers, were usually content to let national politics alone.

It is more than probable that when, about the time of the French Revolution, the local newspapers began to take more general notice of current politics, they did so at the instance of the treasury. When they went into politics it was invariably in the interest of the Pitt government. The reason for this is explained by a passage in the life of Edward Baines. Baines took over the *Leeds Mercury* in 1800. When he got possession he found that for some years previously it had been the usage at the *Mercury* office to receive marked copies of newspapers from London. These were sent out regularly by the treasury, and the newspapers thus forwarded to the country editors were London papers under the

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control of the government. Unfortunately for the students of English politics between the French Revolution and the Reform Act, and of the history of English journalism, Baines left no record of the London newspapers which were thus being sent to the country editors when he began his eminently useful and distinguished career. Nor does his biographer indicate how long the practice had been in vogue. It may be taken for granted, however, that the *Sun*, which had been set up by Rose and Freeling in 1793, was one of the papers sent out; and that, while it lasted, Gifford's *Anti-Jacobin and Weekly Examiner* was also one of the number.

The *Anti-Jacobin* was only a short-lived publication. It lasted from November, 1797, to July, 1798, and in all thirty-six numbers were published. But from the point of view of the government it was a veritable editors' hand-sheet. Its features, to quote the prospectus, were

> an abstract of the important events of the week both at home and abroad; such reflections as may arise out of them; [and, most important of all] a contradiction and confutation of the falsehoods and misrepresentations concerning these events, their causes and their consequences, which may be found in the papers devoted to the cause of sedition and irreligion, to the pay or principles of France.

The *Anti-Jacobin* was further to appeal to all

> who think that the press has been long enough employed principally as an engine of destruction and who wish to see the experiment fairly tried, whether that engine by which many of the states which surround us have been overthrown and others shaken to their foundations, may not be turned into an instrument of defense for the one remaining country which has establishments to protect and a government with the spirit and the power and the wisdom to protect them.

William Gifford,[1] afterwards editor of the *Quarterly Review*

[1] There were two Giffords at this period. Both were associated with publications to which the name "Anti-Jacobin" was given. Both were in the service of the government, and both of them were adequately rewarded for their literary work. John Gifford, of the *Anti-Jacobin Review*, which followed the *Anti-Jacobin* of 1797–98, was made a London stipendiary magistrate for his services to the government.

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and associate of Croker, edited the *Anti-Jacobin and Weekly Examiner;* and in this enterprise, in behalf of the Pitt government, he had associated with him the cleverest and most numerous staff ever got together for a newspaper of this kind. Much of the editorial work was done on Sunday; for the *Anti-Jacobin* was published in London on Monday, and in the coaching days it would reach the country editors in time for the issues of their journals, which went to press at the end of the week. For the country journals in the interest of the government there could hardly have been better political matter than that contained in the *Anti-Jacobin;* and, according to Baines's biographer, the country editors depended entirely for their political news on the newspapers which were forwarded to them by the treasury.

In setting up this scheme for using the country press the government relied to some extent on the Church of England clergy. The clergy went into the propaganda as part of the counter movement against Parliamentary reform, and in after years some of them used their zealous efforts in connection with the country press at this period as the basis for claims upon the government for promotion in the church. The editors were rewarded by the gift of postmasterships, by offices in the inland revenue department and by official advertising. Gifford was the most prominent government newspaper writer of this period, and was well rewarded for his services. Journalists were usually paid through pensions and offices. Gifford had no pension, but he held sinecures which were equivalent to a pension. At one time he held three of these: he was comptroller of the lottery office, with a salary of £600 a year; paymaster of the Band of Gentlemen Pensioners, with £300 a year; and clerk of the estreats in the court of exchequer, at £200 a year. He was one of the best-paid government journalists of the Georgian era; and in his turn he is credited with having rendered the government literary services second only to those of Burke.

In the two decades which followed the French Revolution no department of the newspaper press was ignored by the

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treasury. The French immigrants in London had established *Le Courier de Londres*. This paper was in the service of the government, and was for some time nominally edited by Heron, the author of a history of Scotland, who owed his appointment to one of the under-secretaries of state. The mission of this journal, when Heron was connected with it, was to revile Bonaparte and his government. John Peltier, known in English judicial records as the editor of *L'Ambigu*, a political pamphlet of periodical publication, was also in the pay of the government as a journalist. Peltier's connection with the treasury began in the nineties, and was continued to as late as 1815. In that year he drew nearly £800 for his services. As long as England was at war with France there was work for Peltier. Even before the French Revolution the English treasury had in its pay writers for the French newspapers. Among the Abergavenny *Papers* there is a letter written in July, 1779, to Jenkinson, who was then at the treasury, which warrants the suspicion that the *Cologne Gazette* was a journal which might be used in the interest of England.

For the London newspapers which were willing to place their columns at the service of the government there were other advantages besides treasury allowances to their editors and appointments in the civil service. They received the government advertising, for which the rates were always high and the payment certain, and through the government offices they were furnished with intelligence that added largely to their value as newspapers. Some persons might regard them with disfavor or suspicion on account of their known or suspected connection with the government and their subserviency to it; but the people bought the newspapers, nevertheless, for the news which they contained. The *Courier*, during the time it was owned by Daniel Stuart, was known to be a government paper; but it was none the less a prosperous newspaper, and it received many advantages from its connection with the treasury. Occasionally, as Stuart's *Reminiscences* show, the *Courier* received important items of political news even in advance of the *London*

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Gazette, though the latter had been, since the Restoration, the official journal of the government.[1]

In addition, moreover, to the direct advantages which accrued to the owners and editors of a journal in the service of the government, there were indirect advantages of great value at a time when the circulation of newspapers was small, when competition was keen, and when the cost of collecting news was high. The nature of these advantages is well indicated by incidents in the history of the *Times*. The *Times* has always been an independent newspaper. In the closing years of the last century and in the early years of this it was impossible for the government to get the *Times* to act as its subservient organ. Accordingly, when, during the war of 1805, the couriers of the *Times* with war news and foreign newspapers arrived at Gravesend, they were stopped by the government officers there and the intelligence they were bringing was held back, solely in the interest of rival daily journals in the service of the government. This was directly charged by the *Times* in 1810.

Further light on the general subject is to be derived from the Croker *Papers*, from which it appears that the proprietor of the *Times*, in 1815, asked as a favor that the French smugglers who were conveying newspapers for him from France should be unmolested by the guard-ships at the ports. An equivalent was offered. This was not, however, the use of the *Times* columns for matter in the interest of the government, but a loan to the government of the smuggled newspapers, after they had served their purposes in Printing House Square; for in those days the *Times* courier services were so well organized that its couriers frequently outdistanced by two or three days the couriers in the service of the government.

Obstacles in the way of legitimate journalistic enterprise, such as those of which the *Times* complained, were often the lot of the opposition and independent newspapers; and these obstacles were deliberately placed in their way as punishments

[1] Until a few years ago there was connected with the *London Gazette* a well-paid editorship, practically a sinecure, which was usually given to a journalist who had rendered conspicuous service to the political party in power when the editorship happened to fall vacant.

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for their opposition or independence, and as a means of giving undue advantage to those competitors who were willing to sell themselves to the government. The government journalists had still another advantage. The stringent and far-reaching libel laws of those days had no terrors for the editors who were in constant and sympathetic association with the treasury officials. The government journals often ran near the danger line; but for their doings the treasury solicitors' department had a blind eye. On the other hand, it was only necessary for a government journal to call public attention to a risky paragraph which had appeared in an opposition or an independent journal to put the editor and the printer in the dock at the Old Bailey, and there to array against him all the strength of the law department of the crown. This was the fate of Perry, of the *Morning Chronicle*, in 1810, when he was indicted for a paragraph which he had printed, setting forth the good that might be expected from a change in the government which was then thought to be pending. Perry publicly attributed the prosecution entirely to a rival morning newspaper in the pay of the government, which had laid stress on the paragraph and urged the government to prosecute the author and the publisher. The trial failed; but, however much it inconvenienced Perry, students of English party history will not be disposed to regret that the abortive prosecution was begun, for Perry's defense contained one of the most lucid definitions of Liberalism to be found anywhere in the writings or in the speeches of the early part of this century.

Croker was the last of the government managers of the press before the old order in English politics was changed by the Reform Act in 1832. His own *Letters*, the *Life and Letters of Scott*, the *Letters of Coleridge* and the *Life of William Taylor of Norwich* afford glimpses of his work; and in his own *Letters* there is a statement of the estimate he had formed of his work and its value. Croker had as poor an estimate of journalists as the Benchers of Lincoln's Inn had, when, in 1809, they set up a rule against allowing to be called to the bar men who had written for the newspapers for pay. In 1829 he wrote

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of London journalists as "needy adventurers." Yet, if Coleridge's statements are correct, Croker, to serve political ends, associated more or less intimately with journalists whose pens were at the service of the Tory government; and in 1829, when the Duke of Wellington, the premier, was badly in need of a newspaper organ and Croker was trying to get possession of the *Star* for him, he unsuccessfully endeavored to get Lockhart to join the "needy adventurers" in London. Scott, however, had no mind that his son-in-law should become a government journalist; and it was in connection with this proposal from Croker to Lockhart that Scott showed that he had an even poorer opinion of journalists than Croker, for he wrote to Lockhart "that nothing but a thorough-going blackguard ought to attempt the daily press." Moreover, neither Scott nor Lockhart had a high opinion of the nature of the services which Croker so long rendered to the Tory government in connection with the press. "Any understrapper M.P.," Lockhart wrote to Scott, "would do well enough for carrying hints to a newspaper office, and I will not, even to secure the Duke himself, mix myself up with the newspapers."

Croker, who had much of the journalistic instinct, never had the idea that the work he discharged for so many years could, in the disdainful words of Lockhart, be undertaken by "any understrapper of an M.P." Shortly before the long *régime* of the Tories came to an end he seriously put forward the suggestion that it should be the duty of a cabinet minister to instruct the press. In a letter to Planta, of August 21, 1829, he said:

> Suppose you have a good paper open to you and a capital hand to work. How is he to be supplied with materials? He cannot make bricks without straw. How is he to know the line to be taken? . . . No one but a member of the cabinet could do this safely and completely — not that, if a cabinet minister were to hold the pen, he need tell state secrets; but he alone would thoroughly understand the case, and know what to avoid, what to hint, what to deny, when to leave folks in their errors and when to open the real views of the government. I have heretofore conveyed to the public articles written by prime and cabinet ministers, and sometimes have composed such articles under their eye. They supplied the facts and I supplied

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the tact, and between us we used to produce a considerable effect. In a cabinet like ours surely there might be one person who could find leisure for this sort of supervision, if not for some more direct coöperation. If anything of this kind were practicable, it ought to be done with the most profound secrecy, and every possible precaution against even a suspicion should be taken, and the minister who should undertake it, and his conveyancer, as "Junius" calls it, should throw in here and there such a slight mixture of error or apparent ignorance as should obviate suspicion of its coming from so high a source.

It is extremely doubtful whether the plan set out in Croker's letter to Planta — a letter which, for the purposes of this article, is an enlightening piece of history — has ever been acted upon. At the time Croker suggested it the English newspaper press was on the eve of another change, as important as that which occurred in the first decade of the reign of George III. At least one statesman saw that this change was coming, and that the day was at hand when allowances from the treasury, appointments in the civil service, government advertising and early information for the news columns would no longer serve as bribes to tie daily newspapers to the fortunes of the government; and that newspaper enterprise was gradually assuming such proportions that a government could no longer punish an opposition or an independent newspaper in the peculiarly annoying way in which the *Times* was punished in 1805. Lord Grey had had none of the experience in newspaper work which had been Croker's. But he was an observant man, who had been long in politics; and in 1831 he foresaw with much clearness the great changes which England's supremacy in the world of trade and her increasing wealth were to bring upon the daily press.

When the Whigs took office under Grey, the *Courier*, of which Croker had had much experience, was still regarded as a government journal. It had broken with the Tories about the time of Catholic Emancipation. Princess Lieven, wife of the Russian ambassador, was under the impression that the new government controlled the *Courier*, and she wrote to Grey to complain of a statement in regard to Poland which had appeared in its columns. Grey wrote in reply:

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I saw the article last night in the *Courier* and it vexed me very much. We really have no power over that or any other paper in great circulation. All that we can do is by sending them sometimes articles of intelligence (but even to this I am no party) to conciliate them when public opinion is not against us. But when there is a strong general feeling, as in the case of Poland, it is quite impossible to control them. We might purchase a paper that is not read, which would do us no good till it got into circulation, and then it would do just like the others. The truth is that the profits of a paper extensively taken in are so great that they are quite beyond any temptation that could be held out to them.

But though, as Lord Grey pointed out, newspapers could no longer be tied to the government by the old forms of reward, by the bribes which had been used so effectually during the sixty years preceding the Reform Act, the Whigs, when they came into power in 1831, could and did reward journalists who for principle's sake had stood by them during their long period in opposition. Civil-list pensions and appointments in the civil service were bestowed on the journalists who, in the *Examiner*, the *Morning Chronicle* and other newspapers, had upheld Liberalism in the days when Toryism was supreme and when an unwary paragraph landed an opposition newspaper writer in jail. Indeed, for nearly two generations after the first Reform Act journalists were frequently appointed to consulships, to colonial judgeships and to responsible positions in the civil service at home, as rewards for services to their political party in or out of office.

Until about 1870 there was some similarity between the methods of the English government in rewarding journalists and those which still prevail in the United States. There were, however, two important differences. An English working journalist — and by a working journalist is meant one engaged on a newspaper at a salary — was never given an office equal in importance to some of those which are bestowed on journalists in the United States. English journalists were not sent as ambassadors abroad: the line was drawn at consular appointments. To this extent journalists in England continued to share in the spoils of office; but office holders were not

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cashiered solely to make places for men whom the government desired to reward. A fairly long list could be compiled of journalists who, since the Reform Act and since the change in this century in the character of the public journals, have been appointed to office at home or abroad. About the last name in the list of those appointed to consulships is that of Hanney, at one time editor of the now defunct *Edinburgh Courant*, an organ of Toryism in Scotland of much antiquity, who, in 1871, was appointed consul to Barcelona by the Earl of Derby.

The reform of the civil service in the seventies made it no longer possible for governments to bestow offices in the state departments at home or abroad for partisan services. The gate of entry to the civil service has been widened; but it must now be passed early in life, and at civil service examinations, or not at all; and nowadays there are comparatively few appointments in the civil service which a government can bestow upon its journalistic supporters. Taking one year with another, there are not half a score of places into which men can be thrust simply because they have rendered some service with their pens.

The opportunities for rewarding newspaper proprietors, as distinct from journalists, came to a temporary end somewhat earlier. When Earl Grey wrote to Princess Lieven the letter which has been quoted, English daily newspapers were already undertakings in which large capital was embarked. They were then past the stage at which the government could give newspapers any really valuable privileges or aid. There were still official advertisements to give out, but the value of these was becoming small and of little account to a prosperous newspaper in comparison with its general advertising patronage. As years went on and the fiscal burdens on the press were removed by Parliament, the circulation of newspapers became larger. They became properties of great value; and their owners began to find their way into the House of Commons, as bankers, merchants and manufacturers had been doing all through the eighteenth century. From the thirties and the

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forties to the eighties, except in rare and occasional instances, like that of Sir John Easthope and the *Morning Chronicle*, newspaper proprietors carried on their business without any recognition or reward from the government. Not until 1885 did government manifest a consciousness that it was once more in their power to reward the owners of the daily journals which supported them. The form which rewards then began to take strikingly illustrates the enormous change which, since the beginning of this century, had come over British journalism; for the meed of the influential newspaper owner was a knighthood, a baronetcy or a peerage.

Lord Salisbury was the first premier to bestow this form of reward. He began with knighthoods in 1885. Later on baronetcies were bestowed on newspaper proprietors; and in two or three instances peerages were given. Mr. Gladstone soon followed Lord Salisbury's example. He, in turn, was followed by Lord Rosebery. There is now seldom an honors list in connection with the Queen's birthday or the New Year in which the names of newspaper proprietors do not appear. Newspaper editors also have received titles, usually knighthoods. During the last twelve years this new method of recognizing the press has been so general that there is scarcely a town in England with a population of 150,000 which has not a newspaper proprietor or an editor with a title.

One singular result has followed the innovation of 1885. The ownership of newspapers has become a fad with men who are wealthy and who are also anxious to become knights or baronets. To finance a daily newspaper committed to the fortunes of a political party has come to be recognized as a sure route to a baronetcy. It is an expensive one to travel; but in the long run it does not cost more than endowing hospitals or bestowing large sums of money on schools of music or imperial institutes; and it has this advantage, that it adds to a man's importance in his own neighborhood. He also retains control over the money he is paying out; and, if the party he is supporting is likely to be long in opposition, he can spend just sufficient to keep his newspaper afloat until he obtains his

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reward. Then, if he likes, he can stop it, or sell it cheap to another wealthy man who is also desirous of a baronetcy. This mode of earning a title leads occasionally to some singular changes; for a Tory millionaire will buy a Radical newspaper to-day and bring it out as a Tory paper to-morrow. All that he has to do is to find a new editor. The paper so purchased and turned to the right-about may lose some of its former readers, but the loss of even half the reading constituency is a small matter to a man who has made up his mind to spend £50,000 or £60,000 in thus obtaining a baronetcy.

It may be asked what effect this new form of reward has upon politics. The real effect is small. An English newspaper of the better class sells chiefly on account of its news features; and these are not affected by the fact that the editor and proprietor may have had titles conferred upon them by a Liberal or a Tory government. Any tampering with the news features would tell against the position and prosperity of the paper, and it is not attempted. The political speeches and the political news of both parties are reported honestly and fairly as heretofore; and as long as the present high standard of English newspaper reporting is upheld, there is practically no danger to political education in the best and fullest meaning of the term. This reasoning applies to the papers of established reputations, which are also commercial enterprises. As concerns the papers which are established or transferred merely with a view to aiding the men who finance them to secure titles, the wonder is that any government can think it worth while to reward the owners with titles. Such papers, especially the evening papers of this class, depend more upon sporting-news than upon politics for their circulation; and for their purposes a "tout" at Newmarket or Epsom, who can send to the office reliable tips as to horses, is of more value than the best editorial writer who was ever in Fleet Street.

EDWARD PORRITT.

FARMINGTON, CONN.

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ADAM SMITH'S LECTURES ON JUSTICE, POLICE, REVENUE AND ARMS.[1]

I.

THROUGH the publication of this report of Adam Smith's Lectures on Jurisprudence, edited with scrupulous care and extraordinary industry, Mr. E. Cannan has thrown a most serviceable light on the literary history of economics and on the intellectual development of Adam Smith. It may be permitted to me, as one who has devoted himself for many years to this old master of our science, to point out wherein, as I believe, consists the increase in our knowledge that has thus been brought about.

At the outset must be mentioned the fact that we are now for the first time in a position to form an entirely clear conception of Smith's Lectures on Jurisprudence. Especially can we understand Millar's statement that Smith endeavored

> to trace the gradual progress of jurisprudence, both public and private, from the rudest to the most refined ages, and to point out the effects of those arts which *contribute* to *subsistence* and the *accumulation* of *property*, in producing corresponding improvements or alterations in law and government.

We live in an age of materialistic philosophy of history, and we know how to appreciate the fact that a Scotch professor of moral philosophy attempted, more than one hundred and thirty years ago, to explain law as based on economic conditions. In only a few passages do we miss this treatment. To take a single example, neither the origin nor the abolition of slavery is explained by him on economic grounds. Thus, he says:

[1] Lectures on Justice, Police, Revenue and Arms; delivered in the University of Glasgow by Adam Smith; reported by a student in 1763; and edited, with an introduction and notes, by Edwin Cannan. Oxford, The Clarendon Press, 1896. —xxxix, 293 pp.

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It is to be observed that slavery takes place in all societies at their beginning, and proceeds from that *tyrannic disposition* which may almost be said to be natural to mankind. Whatever form of government was established, it was a part of its constitution that slavery should be continued [p. 96].

A few pages further on, we learn that in western Europe slavery was abolished for political reasons — in fact, by the monarch, who "did all he could to lessen this (the lord's) influence," and by the church, since "whatever diminished the power of the nobles over their inferiors increased the power of the ecclesiastics." On the other hand, it is interesting to see that Adam Smith speaks of the guilds almost like a modern economic historian: "Though they might once be conducive to the interests of the country," we read on page 130, they are "now prejudicial to it." He speaks in a similar way, on page 235, of the markets and fairs, whose necessity he seeks to explain from the conditions of earlier times: "All fairs, however necessary they then were, are now real nuisances. It is absurd to preserve in people a regard for their old customs, when the causes of them are removed."

Further, the *Lectures* enable us to understand how the belief could have arisen that Adam Smith originally intended to write a history of civilization. This view is simple enough for those who are ignorant of the history of natural law or of Scotch moral philosophy, as well as of the profound influence of Harrington, Montesquieu, Hume and others on the social and political sciences. The *Lectures* show us now in the most unambiguous way that Adam Smith worked from 1760 to 1764 entirely within the limits of the Scotch moral philosophy: he had not yet at that time undertaken to separate the science of law from that of economic conditions. He defines jurisprudence as "the theory of the general principles of *law* and *government*. The four great objects of law are justice, police, revenue and arms." The fact that he put the historical point of view so strongly in the foreground by no means proves that he was intending at that time to write a history of civilization. So also, the letter dated March 5, 1769, which Delatour has

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quoted in support of his view,[1] is entirely beside the point: it proves merely that Smith continued to devote himself to studies in legal history even after he gave up his professorial chair. This letter, moreover, probably supports an important inference which we draw from the end of the *Theory of Moral Sentiments*, — namely, that after his return from France Smith could not have thought of getting to work at once on his *Wealth of Nations*, but still intended to write a large work on jurisprudence, which would have included "justice, police, revenue and arms."

Much more important is another scientific advance, which we owe to the publication of the *Lectures*. It is now an undoubted fact that the system of political economy, as we meet it in Adam Smith, grew out of the system of natural law. A comparison of the first book of the *Wealth of Nations* with the corresponding part of the works of Grotius, Pufendorf, Wolff and Hutcheson induced me to express this opinion six years ago.[2] With this conception as a basis, I was able to conjecture wherein consisted the aid which Smith derived from his acquaintance with the Physiocrats and their writings. My supposition is now corroborated in all important points by the judgment of Cannan.[3] I fully share the contempt of Cannan for the "enthusiasts of plagiarism" who seek to make of Smith's ethics a weak copy of Hume, and of his economics a mere plagiarism of Turgot; for the endeavor to ascertain the factors which have determined the development of prominent individuals and of science itself has nothing in common with such aspersions. August Boeckh, in his *Encyclopaedie und Methodologie der philologischen Wissenschaften* has laid it down as one of the most important tasks of the historian of philosophy "to ascertain the standpoint at which they [the philosophers] are placed by the historical development of science." The accomplishment of such a task makes it necessary to combat on the one hand those naïve souls who believe that the "great

[1] Adam Smith, sa vie, ses travaux, sa doctrine, 1886, p. 91.

[2] *Cf.* my Untersuchungen über Adam Smith und die Entwickelung der Politischen Oekonomie, Leipzig, 1891.

[3] Cannan, Lectures on Justice, Police, Revenue and Arms, pp. xxvi–xxviii, and my Untersuchungen, pp. 163, 434, 435.

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men" have drawn everything from their own inspiration and are but little influenced by their own times, and on the other, those pitiful minds who scent intellectual thievery whenever two persons say something similar. Both these classes lack appreciation of the laws of the development of thought.

Another imputation upon Adam Smith's genius, made even in the eighteenth century, is now finally silenced by the *Lectures*. It was maintained that Smith borrowed the principles of economic freedom from the Physiocrats. That part of his work entitled "Cheapness and Plenty" proves, however, — and in a way which surpasses all expectation, — that before his acquaintance with the Physiocrats he elaborated in his *Lectures* all the applications of the principles of economic freedom. On economic grounds of "expediency" he upholds the freedom of industry (pp. 179, 236), he maintains (pp. 209, 236, 246) the principle of commercial liberty, he demands free banking (p. 195). Like Arthur Arnold, Brodrick, Kay and others, he energetically opposes the land laws:

> The right of primogeniture hinders agriculture. If the whole estate were divided among the sons, each one would improve his own part better than one can improve the whole; besides, tenants never cultivate a farm so well as if it were their own property [p. 120].

"Entails," we read again on page 124, "are disadvantageous to the improvement of the country, and those lands where they have never taken place are always best cultivated." In the northern colonies, we are told on page 226, "the lands are generally cultivated by the proprietors, which is the most favorable method to the progress of agriculture." Indeed, what we are accustomed to call the mobilization of land finds in him a warm defender:

> If all the forms in buying lands were abolished, every person almost who had got a little money would be ready to lay it out on land, and the land by passing through the different hands would be much better improved. There is no natural reason why a thousand acres should not be as easily purchased as a thousand yards of cloth [p. 228].

It is to be regretted that in the *Wealth of Nations* Smith did not follow these convictions to their conclusion and demand

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that the "tenants" be converted into "proprietors." But in the later work he took the same position as Arthur Young and Arbuthnot, regarding the diminution of the number of cottagers and other small occupiers of land as "an event which has in every part of Europe been the immediate forerunner of improvement and cultivation." Thus, by reason of his great authority, he made himself partially responsible for that "engrossment of lands" which he could not sufficiently deplore.

The metaphysical premises, also, of his policy of freedom appear here and there, even though in far less developed form than in the *Wealth of Nations* or the *Theory of Moral Sentiments*. On page 182 we read: "It is by far the best police to leave things to their *natural course*." On page 201 we are told: "There is no fear if things be left to their *free course* that any nation will want money sufficient for the circulation of their commodities." On page 180 he explains, quite in the spirit of the *Wealth of Nations*, "the *natural balance* of industry." This balance, he thinks, is disturbed when any branch of industry is favored by a bounty: "People are called from other productions which are less encouraged, and thus the balance of industry is broken." Again: "On account of the natural connection of all trades in the stock, by allowing bounties to one you take away the stock from the rest." Even the psychological bases of the *Wealth of Nations* come to view here and there:

> We may observe that those principles of the human mind which are most beneficial to society, are by no means marked by nature as the most honorable. . . . That principle in the mind which prompts to truck, barter and exchange, though it is the great foundation of arts, commerce and the division of labour, yet it is not marked with anything amiable. To perform anything, or to give anything without a reward, is always generous and noble, but to barter one thing for another is mean [p. 232].

II.

In my *Untersuchungen* I endeavored to prove that Adam Smith could not have borrowed the principle of industrial liberty from the Physiocrats, because the formulation and method

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of proof employed in the Essay of 1755 were quite different from theirs. Much as I rejoice that my view has been confirmed, it must be strongly emphasized that the metaphysical foundation of his liberalism, which comes out so clearly in the Essay of 1755 and which is in the fullest agreement with the metaphysical bases of the *Theory of Moral Sentiments*, appears but incidentally in the *Lectures*. Why? we ask. Did he suppress his metaphysics because he was concerned with the province of "expediency" alone? In that case he must have given the basis of his system in the Essay and in the Lecture on Natural Theology; and this is precisely what I pointed out in my book. We are indeed able, as I have shown, to reconstruct Smith's general philosophy (*Weltanschauung*); but it is the Lectures on Jurisprudence which show us that the perusal of the Lecture on Natural Theology would open up new views and posit new problems. I cannot share the opinion of Cannan that the Lecture on Natural Theology is "not of historical importance": on the contrary, I believe it most desirable that this Lecture, as well as the Essay of 1755, be published, in the ideal interest of throwing light on literary history. Cannan supports his opinion by saying: "Arguments which would have been convincing in 1763 will fall perfectly flat in 1896" (p. xiv). But this is to assume a utilitarian, practical point of view, from which it would be hard to explain why the Lectures on Jurisprudence were published. The true end to be sought is not arguments, but an insight into literary history.

Far more striking than the absence of the metaphysical bases is the fact that, in the part entitled "Cheapness and Plenty," we find nothing at all about the natural laws of economic freedom. In the *Wealth of Nations*, as is well known, they appear again and again; and Smith terms his system "a system of natural liberty." Who does not remember that he denounced the expulsion of an innocent man as "an evident violation of natural liberty and justice." An interference with freedom of industry or capital is, according to Smith, "a manifest violation of the most sacred rights of mankind." This is the language of the Physiocrats, and of itself renders it explica-

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ble that in the eighteenth century Smith was counted among their disciples. But he also reminds us of Locke when he says: "The property which every man has in his labor, as it is the original foundation of property, so it is the most sacred and inviolable." It is well known that the Physiocrats borrowed this doctrine from Locke.

Furthermore, every reader of the *Wealth of Nations* knows that Smith attempts to define sharply the boundary between public and private economy, and that he lays down principles of justice to govern the economic relations between the state and the individual. These ideas also are lacking in the *Lectures*.

It will be seen, then, that the *Wealth of Nations* differs in two respects from the *Lectures:* it contains the metaphysical elements in an undeveloped form, and it sets forth the demands of the natural laws of economic freedom. From this it results that in the *Lectures* is developed far more clearly the principle of "expediency"—the demonstration that on economic grounds a policy of economic freedom is best calculated to foster the development of wealth.

I once hazarded the conjecture that Smith must have developed the subjective laws of economic freedom in his Lectures on Justice. It must now be confessed that they are not to be found there in a specific form. It is, indeed, beyond dispute that Smith plants himself on the ground of natural law in the *Lectures* also. On page 6 we learn that there are "natural" rights; and he defines them as "rights which a man has to the preservation of his body and reputation from injury." On page 8 the list of "natural rights" is made still larger: "a person has a right to have his body free from injury and *his liberty free* from infringement *unless there be a proper cause.*" But these natural rights of liberty are not developed in a broad way, as in Hutcheson's treatment; they are not applied to the domain of economic life, as by the Physiocrats and by Smith himself in the *Wealth of Nations;* they are not even supported by any argument. Smith tells us that the "origin of natural rights is quite evident," so that "nobody doubts"; and on page 107 we read: "the former (natural rights) need no explanation."

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It is true that from this general principle of natural liberty we may logically derive the particular principles of subjective economic freedom, so that there is no material inconsistency between the *Lectures* and the *Wealth of Nations*. But at one cardinal point a lack of harmony comes out very sharply. We have seen that Smith in his greatest work agrees with the Physiocrats and Locke in regarding "the property which every man has in his labor" as "the original foundation of property." It is well known that Locke in particular deduces private property in land from the labor expended. On the other hand, Smith in his *Lectures* teaches us that "private property in land never begins till a division be made" (p. 109); and on page 110 he precisely inverts the doctrine of Locke. There we read: "Land property is founded on division or on assignation by the *society* to a particular person of a *right to sow* and *plant* a certain piece of ground." In the *Lectures*, therefore, the individual and his labor are in no respect the ultimate source of the right of property in land: the origin of this right is in *society*. And quite in harmony with this, we find that Smith recognizes the possibility of a limitation of freedom by society, if "there be a proper cause." In the same way he opposes Locke when, in speaking on page 2 of the "state of nature," he says, "there is no such state existing," and when on page 11 he rejects "the doctrine of an original contract."

It is now clear why in the introduction to his work Smith does not once mention Locke, or even the great work of his teacher Hutcheson. He speaks of Grotius, Hobbes, Pufendorf and Cocceji as prominent authors in the domain of natural law: "besides these," he says, "there are no systems of note upon this subject." Now it is certain that he saw Hutcheson's work on the *System of Moral Philosophy*, which appeared in 1755: in the list of subscribers to the work we find "A. Smith" (he is the only one who asked for two copies); moreover, he was acquainted with the contents of the work, for he had heard Hutcheson's lectures on the subject, which were embodied in the book. It is still more astonishing that Smith should ascribe the opposition to Hobbes exclusively to the "divines."

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"They endeavored," we are told, "to show that man in this state has certain rights belonging to him, such as a right to his body, to the fru ts of his labor, and the fulfilling of contracts. With this design Puffendorf wrote his large treatise." That poor Pufendorf, who was badly treated throughout his life by the "divines," should get into this company is strange; but not so strange as the fact that Smith seems to know nothing of the existence of Locke, the founder of the doctrine of the rights of man.

To any one who has read the *Lectures*, however, the explanation of these errors and omissions is simple enough: on all sides appears the effort to put abstract natural law into the background, and to make room for the concrete treatment of law and government, in the way that had been prepared by Harrington and developed by Montesquieu and Hume. We can only now appreciate the deep influence which these two men exerted on Smith in his earlier years. For the gaping chasm between the *Lectures* and the *Wealth of Nations* there is no other explanation than that Smith, while associating with the Physiocrats, was led by a study of their works to assume a more friendly attitude toward Locke and Hutcheson, and thus gradually to oppose the views of Montesquieu. For upon this point we must suffer no illusion: the Physiocrats did not look with friendly eye upon the historic-realistic conception of law and government which Montesquieu especially made so popular. Dupont de Nemours once expressed this very pungently:

> Combien doit être petit le nombre des hommes auxquels il appartient de savoir ce qui ne leur fut pas enseigné par leurs maîtres. Songez que Montesquieu lui-même vous a dit, comme un autre, que les principes du gouvernement doivent changer selon la forme de sa constitution, et que, sans nous apprendre quelle est la base primitive, quel est l'objet commun de toute constitution du gouvernement, vous avez vu cet homme sublime employer presque uniquement la finesse extrême, la sagacité supérieure de son esprit pour chercher, pour inventer des raisons particulières à des cas donnés.

We must not, however, regard the change in Adam Smith's attitude as constituting an abandonment of his previous convic-

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tions; for, from the very fact that he lectured on natural law, he was accustomed to an abstract treatment of law and government. Jurisprudence he defined as "that science which inquires into the general principles which ought to be the foundation of the laws of all nations." Through Hutcheson he was intellectually related to Locke and Shaftesbury. The mighty influence of Montesquieu and Hume had, however, estranged him from the system of natural law. But while in France, perhaps, he had become aware that the fight against the old order of things required convictions — something more powerful than mere expositions of the "expediency of free trade." His soul was aglow with the flame that inspired the Physiocrats. Then were developed the concepts of the "natural order" and the "natural right" of the individual to liberty; and these became part of his system.

Perhaps still more rich in consequences was the fact that he, who in his *Wealth of Nations* deduced the right of private property from the labor of the free man, in the same work applied the principle of labor to the problems of political economy. In the *Lectures* this principle is relegated to a minor position, in the treatment of both jurisprudence and economics. It is well known how fruitful the principle of labor had been made in English political economy before Smith. I mention only Petty and Locke, Mandeville and Cantillon, Harris and Hume, the author of the essay "Some Thoughts on the Interest of Money, in General" and Hutcheson. The last named, Smith's teacher, was in a certain sense restored to his old place in Smith's regard; and it seems to me due to the stimulus of Hutcheson that Smith makes use of the principle of labor, for all the obscurities of the principle are found already in Hutcheson. Compare the following passages:

HUTCHESON.	SMITH.
But a day's digging or ploughing was as uneasy to a man a thousand years ago as it is now, tho' he could not get then so much silver for it; and a barrel	Equal quantities of labor, at all times and places, may be said to be of equal value to the laborer. In his ordinary state of health, strength and spirits, in

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of wheat, or beef, was then of the same use to support the human body, as it is now, when it is exchanged for four times as much silver. Properly the value of labor, grain and cattle are always pretty much the same, as they afford the same uses in life, whereas new inventions of tillage, or pasturage, cause a greater quantity in proportion to the demand.

the ordinary degree of his skill and dexterity, he must always lay down the same portion of his ease, his liberty and his happiness. The price which he pays must always be the same, whatever be the quantity of goods which he receives in return for it. . . . Equal quantities of labor will at distant times be purchased more nearly with equal quantities of corn, the subsistence of the laborer, than with equal quantities of gold and silver, or perhaps any other commodity. Equal quantities of corn, therefore, will at distant times be more nearly of the same real value.

If, then, the conviction is well founded that Smith was influenced by the Physiocrats and by Locke in taking up a position antagonistic to that of Montesquieu, we have an explanation of the fact that he abandoned his original work on "The General Principles of Law and Government," and took up the *Wealth of Nations*. The former undertaking would have required that he should oppose Montesquieu: in fact, we are told that Smith, at the close of his life, was working on an *Examen Critique de l'Esprit des Lois*.[1] In all probability, however, his change of subject was much influenced by the fact that political economy developed with surprising rapidity in the sixties of the last century: witness not only the writings of the Physiocrats, but also and by no means least of all, the important work of James Steuart.

The transfer of Smith's intellectual sympathy from Montesquieu to the Physiocrats is responsible, I think, for the mistaken historical view, conspicuous especially in Books III and IV of the *Wealth of Nations*, which distinguishes between "natural" and "unnatural" economic development. In the first chapter of the third book he writes:

[1] Ingram, History of Political Economy, 1893, p. 92.

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Had human institutions, therefore, never disturbed the natural course of things, the progressive wealth and increase of the towns would, in every political society, be consequential, and in proportion to the improvement and cultivation of the territory or country.

Adam Smith grafted a Physiocratic economic branch on the tree of his metaphysics. In the *Lectures* we notice nothing of this at all, even though a large part of the contents of the *Wealth of Nations* is to be found in the paragraph to which Cannan gives the heading, "Of the Causes of the Slow Progress of Opulence." At that time he had not yet made the discovery of a natural and an unnatural development. I cannot help believing that the first book of James Steuart's *Inquiry* contains a more profound and a more correct view of the relation of agriculture to industry than does the *Wealth of Nations*.

III.

The influence of the Physiocrats, however, led Adam Smith into other wrong paths also, as we can well see from the *Lectures*. In this work the part devoted to economics, and entitled "Cheapness and Plenty," is introduced by two paragraphs: "Of the natural wants of mankind," and "That all the arts are subservient to the natural wants of mankind." These disappear in the *Wealth of Nations*, and in their stead is put the well-known "Introduction," which begins with these words: "The annual labour of every nation is the fund which originally supplies it with all the necessaries and conveniences of life." As to this change Mr. Cannan says: "It is not easy to explain why the first two sections were omitted from the *Wealth of Nations*, and the fact will be regretted by those who ask for a theory of consumption as a preliminary to the other parts of political economy" (p. xxvii). It seems to me that the omission is entirely due to the influence of the Physiocrats.

Those predecessors of the Physiocrats and Adam Smith, who for the sake of convenience are called Mercantilists, and to whom it is customary to ascribe many absurd ideas, started out from a consideration of the world as it surrounded them.

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Men, they observed, have wants which, as soon as the division of labor has made its appearance, create a demand for the commodities and the services of others. In an economic condition where credit is but slightly developed, this demand becomes effective through money and gives rise to the activity of the merchants, who at the same time stimulate wants, and therefore demand itself. The demand which is developed in this way causes production, and production cannot grow faster than the demand. The Mercantilists noticed how the development of demand and of production conditioned the employment and the increase of the great mass of men, especially those occupied in agriculture and in the production of raw materials. Thus they started out theoretically from human wants, from consumption, from demand; and their practical conclusion was that commerce and industry must be protected.[1]

This Mercantilist policy was opposed by the Physiocrats, on the ground that it injured and impeded agriculture. Quesnay said:

> Que le gouvernement économique ne s'occupe qu'à *favoriser* les dépenses *productives* et le commerce des denrées du crû, et qu'il laisse aller d'elles-mêmes les dépenses stériles.

In order to support this demand the economic development is then interpreted in a way quite different from that of the Mercantilists. Industry and commerce are held to be possible only because agriculture yields a surplus; therefore the *science économique* must begin with an analysis of production.

> Les négociants ne font point naître . . . la possibilité du commerce [says Quesnay] mais c'est la possibilité du commerce . . . qui (fait) naître les négociants. [And again:] Le commerce . . . est toujours un service plus ou moins dispendieux, et que moins on a besoin de ce service, moins il est onéreux.

The whole distorted character of the Physiocratic conception can, however, best be recognized from Baudeau's *Explication du Tableau Économique*. In that work he discusses the Mercantilist conception at length, and formulates it as follows:

[1] A fuller exposition of the Mercantilists' views is impossible here from lack of space. I can only refer the reader to Books I and II of James Steuart's Inquiry.

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C'est le *désir de jouir* des façons, du trafic ou des amusements, qui excite aux dépenses productives: donc, *l'industrie est productive*, et même plus productive que les dépenses foncières et la culture, donc la classe prétendue stérile est tout le contraire.

In opposition to this view, he thus lays down the doctrine of the Physiocrats:

Nous trouvons pour *première cause* . . . les avances annuelles. Si je demande à toute personne raisonnable, qui est-ce qui a produit les épis dans ce champ? elle me répondra, c'est la *semence* et *le labeur*, car, pour recueillir des moissons, il faut fumer, labourer et semer.

With this compare the views on the *Question Singulière:* "Si le besoin ou le désir sont jamais les vraies causes de la production?"

Adam Smith, who leans at this point to the Physiocrats, pushes two steps beyond Quesnay. He regards as productive not only the labor which produces raw materials, but also that which is employed in industry and commerce; and he does not limit the demand of *laisser-faire* to industry and commerce, but extends it to all branches of economic activity. Since, therefore, production can no longer in any form be regarded as the aim of the state, he declares that "consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer." Here appears in all its sharpness the contrast between the Mercantilist theory and the liberal economics. The new view starts theoretically from production and practically demands protection for consumers; the old view starts theoretically from consumption, and demands protection for producers. The theoretical, and still more the practical, errors of the post-Smithian economics that were due to starting out from production are very evident; and it is now beginning to be recognized that the theory of economic phenomena must begin with an analysis of consumption. Jevons, as is well known, has given the most energetic expression to this view. My task has been merely to ascertain why Adam Smith strayed from the right path.

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IV.

If now I should attempt to sum up the result of these observations, I should state it somewhat as follows: The Physiocrats have played a far more important rôle in the development of Adam Smith than we have hitherto dared to assume. Not only did they for the first time put him in a position to develop a system of theoretical economics that was complete in matter, even if perhaps not in form, but they induced him to apply "natural law" to economic conditions, and to give to the "natural order" a far wider extension than had before been attributed to it. And these, indeed, are the very elements which give to Smith's system its sharply defined character.

But, highly as we may estimate the merit of the Physiocrats, it cannot be maintained that Adam Smith's connection with them was an unmixed advantage to him. On the contrary, it might be said that Smith purchased the aid which they afforded him at a heavy cost. Support for such a view is to be found in all his conceptions of a natural law, a natural order, a natural and an unnatural historical development, in his abandonment of the doctrine of wants, and in his employment of the doctrine of production as the base of his system. Adam Smith's mind thus lost the impartiality and objectivity which we see in the *Lectures*. He constructed artificial causal connections which he had not previously discovered and he saw in the Mercantile system — that joint historical product of many political, social and economic forces — only a monster that had been deliberately brought into existence by the merchants and the industrial employers.

Had Smith been able to develop further on the lines of that training which is manifested in the *Lectures*, his economic system would probably not have attained its completeness; but he would have preserved the objectivity of his historical judgment and the purity of his economic perception. The blemishes of which the historical school and Jevons have complained are almost entirely absent in the *Lectures*.

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REVIEWS.

The Laws and Jurisprudence of England and America: Being a Series of Lectures delivered before Yale University by JOHN F. DILLON, LL.D., Storrs Professor, Yale University, 1891–92. Boston, Little, Brown & Co., 1894. — xvi, 431 pp.

A First Book of Jurisprudence, for Students of the Common Law. By SIR FREDERICK POLLOCK, Bart., M. A., LL.D., Corpus Christi Professor of Jurisprudence in the University of Oxford. London and New York, The Macmillan Co., 1896. — xvi, 348 pp.

Judge Dillon's lectures have positive merit of a high order. His long experience at the bar and on the bench gives freshness and value to his treatment of practical themes, such as trial by jury (pp. 120–132) and the condition of the law of real property (pp. 237–241). Particularly good, also, are the second and third lectures, on "The English Inns of Court," which give the student a mass of information not easily accessible elsewhere, and the twelfth lecture, which is devoted to Jeremy Bentham.

Like the majority of English and American lawyers, Judge Dillon is deficient in knowledge of general legal history and of foreign systems. In comparing the English with the Roman law (pp. 171, 172) he apparently declares, by implication, that the Roman law was wrought out by doctrinaires and that it is not based on the experience of mankind. He does not appear to know that the *Digest* of Justinian is chiefly composed of case law, or that half of the constitutions in Justinian's *Codex* are decisions rendered by the imperial judges in the name of the emperor. He therefore conceives of Roman law as a system but slightly capable of judicial development, quoting (p. 231) a passage to that effect from Markby. In fact, of course, modern and ancient Roman law are very different things, and the change has been wrought, in the main, by judicial interpretation. Even in our own day the German courts have discovered in the cases decided at Rome principles and rules which the Romans never formulated. Again, Judge Dillon follows Montesquieu and Freeman in deriving modern European liberty from the German forests — a fable which has been demolished by German legal historians. He can see no good in feudalism except its chival-

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rous attitude towards woman, and the system of primogeniture has to him no reasons for existence save the gratification of ancestral pride and the maintenance of family splendor (pp. 169, 170). He can hardly be aware that feudalism took shape in the stress of the conflict with the Saracens, and that it was the feudal cavalry that kept Europe Christian. He ignores the fact that until the present century the holdings of the peasant as well as the lands of the noble went to one son, usually the eldest but sometimes the youngest; and that the abolition of this rule has produced, both in France and in Germany, grave social changes, not clearly for the better. His idea that modern German jurisprudence fails to separate law from ethics (pp. 7, 8) is obviously based upon the writings of the natural-law school. He does not realize that Savigny and his successors draw this distinction as sharply as do Hobbes and Bentham. Criticising the English analytical school, he says — and rightly — that the formal test of law is not that it proceeds from the state, but that it is enforced by the state; but he does not note that this eminently practical observation was made twenty years ago by the German professor, Rudolf von Jhering. He is greatly alarmed lest our laws and our jurisprudence be "continentalized," and this bogy looms all the bigger to him because he is rarely able to define to himself or to his readers what the European continental tendencies really are. Only two points come out clearly: that he is an adherent of jury trial in civil cases and an opponent of administrative courts. It may reasonably be inquired, however, whether American criticism of the civil jury or the appearance in our country of things singularly like administrative courts are due to European influence. Our boards of customs appraisers, at least, seem to be an independent product. Nor does he clearly separate foreign influence upon our jurisprudence from foreign influence upon our institutions and laws. No one, I think, will contest his assertion that English law is better for us than any other system could be; but if jurisprudence be the science of law, it can attain its true stature only by the use of the comparative method; and by rejecting the contributions of the European civilians, English legal science will deprive itself of half its proper food.

It is only fair to say, however, that the errors and prejudices here noted are in no sense peculiar to Judge Dillon. He exhibits the ordinary limitations and expresses the average opinions of the English and American bar. It is only fair to note, also, that Judge Dillon modestly disclaims, in his preface, "any pretension to pro-

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found research or exhaustive treatment," and declares that the purpose of these lectures was

> to inspire a patriotic and just regard for the laws and institutions of our country, to incite enthusiasm in the study of the law rather than to impart technical instruction, to awaken inquiry rather than to satisfy it upon subjects of vital moment to the profession lying somewhat outside of the ordinary legal curriculum. It is due to me and to the reader that the book be judged from this point of view and no other [p. viii].

Judged from this point of view, the book cannot be praised too highly. It will surely help law students to appreciate the important part which our lawyers play in shaping the destinies of our country, and it cannot but quicken their sense of professional duty. In his insistence upon large views, Judge Dillon belongs to the older generation of American legal writers — the generation of Kent and Story. He belongs to that generation, also, in the roundness of his periods, the stateliness of his diction and the constant suggestion of familiarity with the best English literature. "A lawyer without history or literature," says Pleydell, in *Guy Mannering*, "is a mechanic — a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect." In spite of his deficiencies in general legal history, Judge Dillon meets Sir Walter Scott's triple test.

That Sir Frederick Pollock is well versed in general legal history, as well as in the history of English law, and that he is familiar with the best results of continental experience and thought, need be said only to those who have failed to read his other books. No other English writer possesses so thorough an equipment for work in the field of comparative jurisprudence. His familiarity with the modern German literature of Roman law reveals itself throughout Part I of the present volume, which deals with matters that German pandectists assign to the "general part" of their treatises. His chapters on law and rights, persons and things, events and acts, possession and title would probably never have been written — would certainly never have assumed their present form — without the model furnished by the German writers. At the same time his discussion of all these topics is nearly as fresh and suggestive to a student of German legal science as it can be to an English lawyer. The new elements which make his book original are his thorough acquaintance with English law, his preference for English examples and illustrations — "intended," as he neatly remarks, "as a protest against the habit of regarding 'jurisprudence' as some-

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thing associated with a little knowledge of the laws of every country but one's own" — and his English common sense, which preserves him from wandering off into discussions that have no practical bearing upon the comprehension or application of legal rules. Original, also, and in the highest degree valuable, is his recognition of the natural or social element in legal institutions and his constant effort to explain and judge legal institutions from the social point of view. The value of this effort is perhaps most conspicuously illustrated in his discussion of the artificial person, in his inclusion in this category of the firm, and in his extremely suggestive treatment of the relation between possession and title. In this last matter he owes something to Jhering's *Besitzschutz*, but his knowledge of English law enables him to make far more conclusive the demonstration of the points upon which he and Jhering agree.

To the beginner some passages in this first part may seem not merely abstract, but unpractical. The student may perceive that the analysis of the legal conception of a "thing" is essential to the comprehension of the law of property, but he will hardly see that the distinction between intention and motive in acts has any bearing upon the doctrine of mistake. The author leads directly up to Savigny's analysis of mistake and then, rather unaccountably, lets the subject fall. If limit of space did not permit any discussion of mistake, the reader might well have been referred to Pollock's *Principles of Contract*, Chapter VIII.

In this part of the book I find almost nothing to criticise, because almost everywhere I find myself in substantial agreement with the author. As regards the quasi-possession of servitudes (pp. 181–184), however, it seems to me that the difference between quasi-possession and true possession is over-emphasized and the analogy unduly ignored; and if the Roman doctrine is to be touched at all, some hint should be given of the practical value of quasi-possession to the possessor as against the owner of the servient estate. On page 145 the admission in criminal cases of evidence of good character is cited as a recognition of "external motive." If I understand the author's distinction, it is a recognition of internal motive, or, rather, of the probable absence of internal motive. On page 179 the author says:

> In a system where ownership is capable of direct proof and official confirmation, as by a registry of titles to land, the importance of possession and prescription tends to diminish, and might even conceivably become a vanishing quantity.

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This result is not merely conceivable, it is observable. In the new German civil code prescription of real property has vanished and possession of such property is of no importance, except as a ground for protection against illegal disturbance.

The topics discussed in Part II — statutes, custom, decisions, *etc.* — would also appear in a German pandectist's general part, and would be brought into connection with those treated in the first four chapters of Part I. Sir Frederick Pollock, however, has adopted in Part II a method of treatment quite different from that employed in Part I. There is much less comparison between the English system and other systems of law. There is here, in little compass, great store of information concerning the slow development of legislation in the field of English private law, concerning the waning importance of popular or class custom as a source of legal rules, and concerning the beginnings of the English doctrine of judicial precedents. It seems to me that the exposition of this latter doctrine would have been simplified if judicial custom had been recognized as the continuation of and substitute for popular custom; but this relation, so far as I know, is not fully recognized by any legal writers. The concluding chapter on ancient and modern statutes should be put into the hands of every American legislator, to show him the difference between haphazard and scientific legislation, and the necessity of expert aid in drafting laws.

Here, again, there is little to criticise. When, however, the author states, on page 226, that the question whether interpretation does or does not make law is of philosophical interest only, he surely forgets that in the conflict of laws, at least, the question is a very practical one. If a Belgian court has to apply the law of France and finds the written rule identical in the two countries but the interpretation different, the Belgian court must determine whether the French interpretation is or is not French law. If a New York court finds that a case of which it has taken jurisdiction should be decided according to the law of Massachusetts, that the Massachusetts law in point is common law, and that the interpretation of the common law on the point in question is substantially different in the two states, then the question whether the New York court shall follow its own interpretation or that of the Supreme Court of Massachusetts turns wholly upon the antecedent question, whether the local interpretation of the Massachusetts court makes local law. That different views are possible is illustrated by a series of decisions of the federal courts, together with the case of Faulkner *vs.* Hart, 82 N. Y. 413,

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on the one side, and the case of Alexander *vs.* Pennsylvania Co., 48 Ohio State, 623, 637, on the other.

In American constitutional law also the question has proved to be practical. The Constitution of the United States says that "no state shall pass any *law* impairing the obligation of contracts." If now the obligation of a contract be impaired in a state, not by its written law, but by a novel interpretation placed upon the written law by the state judiciary, is the new interpretation a "law"? The Supreme Court of the United States has answered the question in the affirmative.[1]

In enumerating the instances of the acceptance of Roman rules by English courts (p. 325 *et seq.*) it may perhaps be urged that, in view of the rarity of such cases, the author might have added Bechervaise *vs.* Lewis, 7 C. P. 372, 378. In this case (as in Acton *vs.* Blundell, 12 M. and W. 334, 353, which the author cites) there was a direct quotation from the *Digest* of Justinian.

Judge Dillon and Sir Frederick Pollock are both advocates of a well-considered and gradual codification; but both fail to note how the question is complicated in this country by the fact that the federal Congress cannot do the work, and that, if done, it must be done by the state legislatures. In codifying the common law, England exchanges one form of national law for another; we, on the other hand, would substitute local for national law. MUNROE SMITH.

The Study of City Government. By DELOS F. WILCOX, Ph.D. New York, The Macmillan Co., 1897. — xiv, 268 pp.

In this volume Dr. Wilcox has rendered distinct service to the student as well as to the teacher of municipal government. The work does not aspire to the dignity of either intensive investigation or exhaustive discussion, yet it rises above the grade of a high-school text-book. It is an analysis, a classification and a compend of facts, and it covers the whole field. City government in the United States is, of course, the principal concern, but the rich experience of other nations is freely drawn upon. Other men's thoughts on municipal problems are intelligently adduced; but the author also contributes virile thoughts of his own upon the problems he presents. The introductions and conclusions to the various branches of the subject properly comprise a "study" in city govern-

[1] See Rowan *vs.* Runnels, 5 Howard, 134, 139; Ohio Co. *vs.* Debolt, 16 Howard, 416, 432; Pine Grove *vs.* Talcott, 19 Wallace, 666, 677.

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ment; while the fact-filled outline, which makes up the body of the book, may well be termed "a handbook to the study of city government."

The plan followed by the author is "to make a general analysis applicable to the study of government in any of its grades or branches, and to fill in the outline more in detail for the special study of city problems." In pursuance of this plan the whole subject is distributed into three groups: (1) "Problems of Function"; (2) "Problems of Control;" (3) "Problems of Organization."

> Politics [says the author], or political science, treats of the methods of fulfilling the functions assigned to the state and its agents. . . . The most useful classification in the study of politics is one that arranges these functions, whether undertaken in one country or another, in the present or in a past age, around certain groups of purposes as conveniently as possible for the illumination of the problems of control and the problems of organization, which together make up the real task of political science.

This tripartite division of the subject as a general scheme is, I believe, unique; and the differentiation of minor topics under these heads is singularly distinct and complete.

In view of his characterization of the divisions of his subject, we are naturally led to look to the author's presentation of the problems of function as the essentially original and philosophic contribution of his work to current thought. "The functions of government," he says, "may be roughly classed as direct and indirect, or primary and secondary." Under primary functions he includes the exercise of the ordinary police powers and social activities "whose direct and immediate purpose is to promote the general welfare." Secondary functions are "means to some further end," the most important being the raising of revenue, the carrying on of public works and the providing for elections. In attempting such distinctions and classifications there is always the danger, as the author himself says, of making refinements that are "quite scholastic," and I fear that he has not wholly escaped it. Every primary function of government has its ancillary function: every end is attained by means. While there are, it is true, general means, such as the raising of revenue, which are secondary to many ends but are not ends in themselves, it would, nevertheless, be well to emphasize the fact that even the maintenance of a police force, which Dr. Wilcox would call primary, is really secondary to the general welfare.

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Of more practical and present interest is the discussion of "business and politics in city government." Dr. Wilcox seems to accept Professor Goodnow's proposition that the city "is always a public, *i.e.*, a governmental, corporation"; but he seems to obscure a corollary to this proposition which Professor Goodnow has thus stated:

> In so far as its local and, so to speak, corporate character is emphasized, it will be easier for the municipal electors to give to purely municipal problems the attention they deserve and must have, if municipal government is to be actuated by purely local and municipal motives — if the municipal government is to have regard for municipal needs.

In a period, like the present, of violent controversy on questions of municipal politics, such a work as this must play an important part. As it will be consulted alike by those who seek truth and by those who seek arguments, it cannot be too clear in the statement of principles. In opposing "the cry of 'business, not politics,' in reference to municipal government," and in contending for "the essentially political character of cities," Dr. Wilcox has unfortunately thrown himself open to misapprehension — on the one hand, by those who distinguish between business and gain; and, on the other hand, by those who confuse municipal politics with national partisanship.

As to "problems of control," the city is presented as occupying one of three positions: "It may be a city-state; it may be a grade of local government established by the state in the constitution; or it may be simply the creature and agent of the general government." For breadth of treatment, exhaustive analysis, and wealth of citation this chapter cannot fail to be gratifying to the student of the vexed question of "municipal home rule." In respect to central control, it appears, we have much to learn from European countries. While the author does not pretend to maintain any thesis, the irresistible argument of the facts here gathered is in favor of the development of the now incipient administrative control over local officers in many matters of general concern to the state and of the practical independence of the city in purely local matters.

The "problems of organization" occupy half the book. The new charters that have been turned out of the legislative mill so abundantly in recent years are freely cited in the presentation of the different elements in city organization. Not the least interesting details are those taken from the charter under which the great experiment commonly known as Greater New York will be inaugu-

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rated January 1, 1898. The bearing of organization upon municipal politics is logically set forth in the experience of American cities.

> The central purpose of political organization [says the author] is to fix responsibility. . . . If democracy is to be a success, all those who participate in sovereignty must have freedom, tempered with a sense of responsibility. The citizen must be organized into the government, and not the government organized over the citizen.

This book is an added proof of its own timeliness. Good city government is the key to the success of democracy in America. With one-third of our population urban, with the constant tendency toward the absorption of suburban territory into the city, and, above all, with the growing demand for the practical freedom of the city to regulate its local concerns, we may say that we are approaching an era of the practical rehabilitation of the "city-state." With democracy dominant and largely insensible to political responsibility, especially in cities, the only safeguard of good government lies in teaching the people how to rule. Such a book as this gives intelligent patriots a fulcrum of fact, by the help of which they can use their influence effectively to raise the tone of citizenship.

COLUMBIA UNIVERSITY. C. M. LACEY SITES.

State Control of Trade and Commerce by National or State Authority. By ALBERT STICKNEY, of the New York Bar. New York, Baker, Voorhis & Co., 1897. — xiv, 202 pp.

This work embodies a very able argument against the decisions of the New York Court of Appeals and the United States Supreme Court in the cases of People *vs.* Sheldon (139 N. Y. 251) and United States *vs.* Trans-Missouri Freight Association (166 U. S. 290) respectively. Mr. Stickney's main contention is that the common law of neither England nor the United States recognizes as a criminal conspiracy the combination of individuals to raise prices; and that, therefore, a decision that such a combination is either an act injurious to trade or commerce, as was decided by the New York Court of Appeals, or an act in restraint of trade, as was held by the United States Supreme Court, is incorrect from the purely legal point of view. He also believes that these decisions are unwise from the economic point of view. As Mr. Stickney's reputation is chiefly that of a lawyer, his views on the legal aspect of the subject are naturally entitled to the greater weight, and we may with propriety address ourselves to these exclusively.

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While there is much to be said in favor of the view which Mr. Stickney holds, he has taken in this book the position of the advocate rather than that of the impartial, unprejudiced student. This fact comes out as clearly as anywhere in his summary of the facts in the case of Mogul Steamship Company *vs.* McGregor, upon which he lays great stress. He speaks of this case as if it decided that a boycott of one steamship company by a number of other ship owners was not a conspiracy, and as if almost all manner of combinations in restraint of trade had, since its decision, been perfectly proper under the English law. What the case actually decided was, that a combination of ship owners, designed to lower freight rates and to give rebates to all shippers who would ship exclusively through members of the combination, and formed with the avowed purpose of crushing the competition of a firm not a member of the combination, was not a conspiracy for which a civil action for damages would lie. Such a combination, says Chief Justice Coleridge in his opinion in the case, is not even in restraint of trade. It is hardly fair to say, as does Mr. Stickney on page 83, that this case holds that "such a contract of combination [*i.e.*, 'a combination merely to raise prices'] independently of any statute, though the courts might not enforce it, never constituted a crime or a legal wrong." A combination to raise prices may or may not by the English law be a crime, but that question was not decided by this case.

Again, in trying to prove that the old English statutes prohibiting combinations to raise or lower prices were never in force in this country, Mr. Stickney quotes a *dictum* from the case of Commonwealth *vs.* Carlisle (Brightley 36); but he forgets to inform us that in this case it was decided that a combination of employers to lower the wages of labor was a conspiracy; nor does he mention the fact that the judge, in rendering the opinion, speaks of "a combination among the bakers to extort an exorbitant price for bread" as one "which every one will acknowledge to be indictable" (p. 42). Finally, most of the authorities which are cited to show that the early "English statutes which created these 'Offenses against Public Trade'" did not become a part of our American law, deal exclusively with the wages of labor, and not with the prices of commodities. It is true, of course, that the statutes as to forestalling, regrating and engrossing were repealed in England before the United States became independent; but it is not so clear that the statutes forbidding combinations to raise the prices of commodities, to which Blackstone refers as having force at the time he wrote, did not become a part of the law

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of the state of New York in accordance with the provisions of its first constitution. Whatever may be the truth on this question, Mr. Stickney's argument does not by any means prove the negative. If these statutes did become law in New York, the court of appeals would not seem to deserve the censure visited upon it by Mr. Stickney for its decision in the Sheldon case. For the almost uniform course of American decisions is to the effect that all contracts of combination in restraint of trade are void, when unreasonable or detrimental to the public welfare; and the court held in the Sheldon case that a combination of coal dealers to raise the price of coal was a conspiracy to do an act injurious to trade or commerce.

But, whatever view we may hold on this point, we cannot but be grateful to Mr. Stickney for his able plea in favor of non-interference with trade by the government, and for the care he has taken to present to his readers in full the many old statutes, both English and American, on this subject.

F. J. GOODNOW.

Glasgow: Its Municipal Organization and Administration. By SIR JAMES BELL, Bart., and JAMES PATON, F.L.S. Glasgow, James MacLehose and Sons, 1897. — xxiii, 426 pp.

In these days of great and rapidly growing cities the diversity of municipal institutions, even in those countries where general laws govern municipal corporations, makes it impossible for the scientific writer to describe adequately the organization and functions of local government in general treatises. Paris, Berlin, London, Birmingham and Glasgow, as well as the great cities of the New World, demand special and detailed treatment. Although this fact is not particularly encouraging to the student of government who wishes to master at short notice the details of the world's political institutions, we may yet be glad that increasing diversity in the municipal experiences of cities marks an important change in the meaning and purposes of government. The repressive functions of government are particularly susceptible of uniform methods of fulfillment. The coöperative functions, on the other hand, demand all that complexity of method which characterizes the social and industrial activities of the modern world. A diversity of local institutions within a larger political unit is, indeed, a sign of political integration. Government is ceasing to be a repressive, life-destroying agency of the sovereign will, and is coming to be a coöperative, life-giving method of sovereign action. In the book before us Sir James Bell, late Lord Provost of Glasgow, illustrates the nature of this change as follows:

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The town council of the seventeenth century was not in any sense the servant of the community; and, although they rendered services good and indispensable, these were performed in the spirit of lord and ruler rather than as duties confided by fellow citizens to their fellows for the common weal. . . . The traditions of the old days have been lost, the methods of rule have been changed, and the spirit and aims of the present day are utterly and entirely dissimilar from those which animated the municipal magnates of the seventeenth century.

Dr. Shaw's writings have made American students familiar with the reputation of Glasgow as a bold and progressive municipality. Furthermore, a report has been widely circulated in the United States that Glasgow, after the beginning of 1897, would levy no more taxes, on account of the large income derived by the city from its street franchises. It is a pity that the ardor of American enthusiasts for municipal ownership has been tempered, and the glory of Glasgow correspondingly diminished, by the discovery that the report is not true. But, although Glasgow has not attained to the rôle of the taxpayer's heaven, its achievements in the field of municipal activity make the Lord Provost's big book distinctly worth writing.

In the thirty-eight chapters are taken up in detail the history, the forms of organization and the actual work of the corporation. The development of the governing body is treated at length; the management of public lighting, of the markets, wharves, parks, museums and educational and charitable institutions is well described. But in all the long list of topics treated no place is found for a general discussion of the finances. There is a description of the "common good" in the chapter treating of the wealth and activities of the corporation, and there are scattered through the book fragmentary statements of the finances of several municipal departments; but there is no analysis of the debt, the annual expenditures, the income or the tax levy of the corporation as a whole. We are able, however, to pick out some interesting facts in regard to public expenditures. Thus, the Glasgow fire brigade, consisting of 109 persons, costs the city $60,000 a year, while the average loss from fires is $500,000 a year. The constabulary, or police force proper, consisting of 1355 persons, is maintained at an annual expense of $600,000. The Glasgow patrolman starts out with a salary of $310 a year, and after eleven years of faithful service in the ranks he receives only $390 unless promoted. Glasgow, it must be remembered, is a city of only 750,000 inhabitants; but if New York could get along with a proportionate expenditure for fire and police protection, the abolition

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of our department of taxes and assessments would be much nearer than it now is.

In spite of his omission of a chapter on the finances, Sir James Bell has given us a book of great interest and of far-reaching importance. Lack of space forbids any extended review in this place of the history and organization of Glasgow's municipal authority. It may be said, however, that until 1895 the town council acted in several distinct capacities — as water commissioners, improvement trustees, *etc.* But the municipal organization has now been considerably simplified by the concentration of powers and duties in the hands of the town council, as such. It should be mentioned, also, that the town council, as the old authority of the corporation, is a body of general, unenumerated powers. But the tendency in recent years has been to limit these powers by statutory grants to the council in its various capacities. Our author says:

> In this way the ancient prerogatives of the corporation have, to some extent, been limited and abridged ; and certainly, at this day, the greatest and most laborious of the municipal duties are discharged, not as by the ancient corporation, but as by trustees and commissioners constituted and acting under modern Acts of Parliament.

As is well known to students of municipal government, Glasgow's extensive ventures into the field of municipal ownership and operation of franchises have been marked with great success. This fact is, perhaps, explained by Mr. Bell, when he remarks:

> The qualities which make a good town councillor are simply those which belong to the successful business man, — method, precision, accurate judgment, and prompt decision, — and with these characteristics the elected councils have been well endowed.

DELOS F. WILCOX.

NEW YORK CITY.

L'Évolution française sous la troisième république. Par PIERRE DE COUBERTIN. Paris, Plon et Nourrit, 1897. — xx, 432 pp.

The Evolution of France under the Third Republic. By BARON PIERRE DE COUBERTIN. Translated from the French by ISABEL F. HAPGOOD. New York, T. Y. Crowell & Co., 1897. — xiii, 430 pp.

M. de Coubertin has written a book that was both sadly needed and very difficult to write — a political history of France from the establishment of the existing republic to the present day. This is not exactly what the title of the book leads one to expect. The evolu-

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tion of a country under a given government consists not so much of the history of that government as of the transformations which take place in the life of the nation during its existence; but we shall not find fault with M. de Coubertin for not giving us exactly what he seemed to promise. No one was further than he from underestimating the difficulties which must be encountered by any writer who undertakes to give to the public an exact narrative of contemporary events. These difficulties are, indeed, alluded to by him in the very first words of his preface: "Any one who undertakes to analyze contemporary history runs the risk of finding that the title of historian is deliberately refused to him." And if the mere narrative of events that are near us presents obstacles which are at times almost insurmountable, how much more arduous must be the task of him who undertakes not merely to relate events, but to state in what respects and to what extent, at different moments of a comparatively short but exceedingly complex period, the character of a whole nation has been modified by events which are very likely not *entirely* known to him! It seems, therefore, that M. de Coubertin's mistake lay much more in the selection of his title than in the composition of his book.

We should not, however, like the reader to suppose that the title of the book is altogether a misnomer. The last five of the fourteen chapters of the volume unquestionably suggest what was very likely the author's original purpose. They are devoted respectively to "The Republic and the Church," "Education," "The Nation Armed," "Ideas and Habits" and "The Social Question." The nine chapters that precede them give us a complete political history of France from the date of the establishment of the republic to the death of President Carnot; and it must be said that even in these chapters the author seldom fails, when the opportunity arises, to call attention to the reciprocal influences of political history and national temper. The fact remains, however, that we have here a "contemporary history of France," the most complete and the best composed that has thus far been published, either in French or in English. The only works to be compared with it are the as yet unfinished history of the Third Republic by M. Zévort and, for the first three years of the period, the two excellent volumes of M. Théodore Duret.

One of the chief merits of the book before us lies in the admirable division of the subject. This could hardly be improved upon. In writing the history of a republic which is now ruled by its sixth president, there was a natural temptation to make of each presidential term

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a chapter of the book. Instead of such a formal and meaningless division of the period, M. de Coubertin discerns a number of periods which are marked by special characteristics in the forward march of the nation towards the definitive establishment and recognition of a truly democratic form of government. The titles of his chapters are: "The Early Years of the Republic" (two chapters), "The Sixteenth of May," "The Alarm of 1875 and the Congress of Berlin," "Tunis and Egypt," "The Jules Ferry Ministry," "Colonial France," "The Crisis," "The Triumph of the Republic."

Another merit of the book is that the author seldom fails to give the greatest prominence to the events which were really of the greatest importance. There was for him danger of losing himself in a maze of details of secondary value. This is generally avoided by putting in the footnotes at the bottom of the page a great deal that the reader would expect — and perhaps rightly — to find in the text itself: such things, for instance, as the composition of the various cabinets, the results of elections, and the divisions at the end of discussions in the National Assembly of 1871–75, as well as in the Senate and the Chamber of Deputies established by the constitution of 1875.

The temper of M. de Coubertin is strikingly impartial. His views are usually those of a not unprogressive moderate republican, who is not without some sympathy with socialistic ideas. He is heartily in favor of the colonial policy of France, and among her statesmen most admires Gambetta and Jules Ferry — the latter perhaps even more than the former. It is not quite certain that he does full justice to President Thiers. Here, perhaps, we strike one of the few faults of this really good book. M. de Coubertin is still a young man: he was born, we are told in Dr. Shaw's introduction to the American edition, on January 19, 1863. Hence, part of the events about which he writes took place when he was still too young to take a very deep interest in public affairs, while in the rest he has been an active participant,— and this fact is clearly visible in the work. The more recent period is treated, if not with more fullness, certainly with much greater vividness and even with greater accuracy than the rest. Thus, the most serious misstatement I have found in the book relates to one of the events of the year 1871. M. de Coubertin states (p. 24) that "on August 31, 1871, on M. Rivet's motion, M. Thiers had received for three years the title of President of the Republic." The facts are that the Assembly *refused* to grant M. Thiers a three-year term and merely decided that he should hold office as long as the Assembly itself. The reason for the change

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thus introduced in M. Rivet's original bill was that the Assembly was entirely unwilling to have President Thiers preside over the elections which would follow its own disappearance. It also feared that if M. Thiers were granted a fixed term of office, he might join the "*campagne dissolutionniste*" of Gambetta and others. Another, but a comparatively unimportant, mistake in another part of the book relates to the gift of Chantilly to France by the Duc d'Aumale, which M. de Coubertin states to have taken place just when that prince was sent into exile by President Grévy. In fact, the gift was not made until much later, and there was no connection between the two events.

Of the translation one is tempted to remark, the less said, the better; but when work which ought to have been done seriously is so wretchedly "botched" as in this case, words of much stronger condemnation, and even full exposure, are decidedly needed. Every one who is desirous of reading M. de Coubertin's book ought to read it in the original French, of which the so-called *English* edition is only a travesty. Every page of the translation contains sentences which are either incorrectly rendered or written in unintelligible English. In places the inaccuracies in translation go so far as to state the very reverse of what is meant by the French text. For example, the vote on the famous Wallon amendment, which made the constitution of 1875 a *Republican* constitution and which was adopted "*à une voix de majorité*," is reported thus: "[the amendment] was adopted, by the vote of the majority" (p. 45).

As a specimen of the translator's English, it is perhaps sufficient to quote the following: "But he [Jules Ferry] did not comprehend any state of things between France and Germany but peace or war" (p. 160).

As a rule, the translator has everywhere used the English word which looks most like the French word to be translated: thus, *grandeur* is everywhere translated by grandeur, never by greatness, and we are told of this or that man's "grandeur of soul." Of the political vocabulary, either French or English, she is totally ignorant: thus, *suffrage à deux degrés* becomes "suffrage in two degrees"; *les sénateurs à temps*, or elected for a term, become "senators with temporary warrants"; *nolle pros* becomes mandates of non-prosecution. She does not know the difference between *Départements* and *Arrondissements*, or, in fact, any of the details with which the translator of such a book ought to have been acquainted.

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Inaccuracies in names are also frequent. For instance, M. Magne, the great financier, becomes M. Magnac (p. 37); while Admiral de Montagnac becomes Admiral Montaigne (p. 46).

The *Nation* has already called attention to the surprising rendering of *Ralliés* by Mugwumps; but what shall we say of a translator who renders *une conception un peu sceptique du monde* by a "non-sceptical (!) conception of the world" (p. 222), and of an editor who speaks of Bossuet's *Discourse on Natural History?*

Miss Hapgood's performance is preceded by an introduction which bears the signature of Dr. Albert Shaw, and which speaks of "her well-known fidelity and skill!"

ADOLPHE COHN.

COLUMBIA UNIVERSITY.

Domesday Book and Beyond: Three Essays in the Early History of England. By FREDERIC WILLIAM MAITLAND, LL.D. Cambridge, The University Press, 1897.—xiii, 527 pp.

Under this modest title Professor Maitland has put forth a masterly treatise which illumines many important phases of English constitutional history in the Anglo-Saxon and Norman periods. His book is a remarkable combination of minute scholarly research and broad generalization concerning some of the most fundamental questions of early English history, and his views are presented in a lucid, attractive style which we are not accustomed to find in learned historical monographs. Most disquisitions on the hide and the plough-land, the *bordarii* and the *radmanni*, of "Domesday Book" are dreary reading; but Professor Maitland holds our attention in all his "meanderings" through the mazes of the great survey.

There is a deftly woven thread of thought running through his three essays, and this thread has an anti-Seebohm hue; it is the first elaborate effort that has been made to controvert Seebohm's brilliant deductions. The "Germanists," or adherents of the older theory of manorial development, have long awaited a work of this sort. They were thankful for what Allen, Earle, Andrews and Vinogradoff had achieved, but that was not sufficient: the arguments of Seebohm and Fustel de Coulanges were not yet adequately refuted. While Professor Maitland aims to controvert Seebohm's conclusions, his tone is not polemical; he has a happy faculty of striking heavy blows with a gloved hand. He strikes blows, moreover, not merely at the "Romanists," but also at the apostles of the older school. His work is, indeed, thoroughly original: he does not move along any well-trodden path.

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To indicate in detail the varied contents of this volume would require many pages; here it is possible only to state briefly the author's main conclusions. In the first essay, entitled "Domesday Book," he shows that the great survey is, above all, a tax book, for its main theme is the "geld." The villein's lord is answerable for the geld due to the crown from the land which the villein holds. This is a matter of importance, because he who pays the tax for the land will be regarded as its owner. There is in "Domesday Book" much evidence that the villeins and sokemen, the tillers of the soil, are being depressed by the geld. The word "manor" in "Domesday Book" is a technical term, meaning simply "a house against which geld is charged." The state will endeavor to collect this tax in large sums.

> It will endeavor to make the great folk answer for the geld which lies on any land that is in any way subject to their power; thus the cost of collecting petty sums will be saved and the tax will be charged on men who are solvent.

In other words, the king gets at the poor through the rich. The burden ultimately falls on the peasants, for they keep the tax collector from their doors by promising the lord heavy rents and services. Thus the geld is one of the forces that contributed to the growth of seignorial authority and the manorial system.

Passing to the feudal superstructure, our author finds feudalism or vassalism in existence before 1066. Many thegns held their land "under" the king or some other lord, though numerous royal thegns were able to forsake their lord, "to go to what lord they please." There was, indeed, among the Anglo-Saxons something very like military tenure. Though the Conqueror defined the amount of military service which each tenant-in-chief owed to the crown, it seems questionable whether he introduced any very new principle. The Anglo-Saxon host was no longer the nation in arms. The lord was bound to bring into the field a certain number of *milites*, perhaps one man for every five hides.

> It is not improbable that one of the forces that is attaching the small free proprietors to the manors of their lords is this "five-hide rule"; they are being compelled to bring their acres into five-hide units, to club together under the superintendence of a lord who will answer for them to the king.

Thus, in the Confessor's time the villeins occupied lands for which their lords gelded and for which their lords fought.

In the last section of the essay on "Domesday Book" Dr. Keutgen's theory regarding the origin of German towns is applied to England.

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What legal principle distinguishes the borough from the township or village in the tenth and eleventh centuries? That is the problem which Professor Maitland desires to solve. He believes that the typical Anglo-Saxon borough was a fortified town, maintained by a county or district for military purposes and invested with a special peace and with its own court. The special royal peace conferred upon fortified places "is the original principle which serves to mark off the borough from the village." Thus, the ancient boroughs are in their inception royal boroughs; though the king was rarely the landlord of all the burgesses, his peace prevailed in the streets; the profits of the court and of the market were his. Some strong arguments are advanced in support of this theory; and, even if the theory may ultimately be regarded as untenable, this section will be read with profit, for it throws much light on the early municipal history of England.

The second essay, "England before Domesday," will probably attract more attention than the other two, because it deals more fully with the most fundamental question of early English history — the question whether the population of England in the seventh and eighth centuries consisted mainly of dependent serfs or of independent freemen, whether the English manorial system is to be traced back to the Roman *villa* with its slaves and *coloni* or to the gradual substitution of the manorial organization for peasant proprietorship. Professor Maitland rejects what he calls "the Romanesque theory." He believes that early in the Anglo-Saxon period there was a large class of freemen who tilled land which they owned; that the Celtic population did not survive as the serfs of the conquering chieftains; that "our true villages, the nucleated villages with large 'open fields,' are not Celtic, are not Roman, but are very purely and typically German." He contends that Seebohm's theory gives no rational explanation of the state of things revealed to us by "Domesday Book" and no rational explanation of seignorial justice. The manorial system was slowly evolved as the result of various causes — the transfer of royal rights to lay and spiritual magnates, the "commendation" of the weak to the strong, the encroachments of the lords and the pressure of Danegeld. Seignorial justice, which may be traced far back into the Anglo-Saxon period, was due mainly to royal grants of immunity or jurisdiction. Though our author argues that in England there were once many free or lordless villages, peopled by free landowning ceorls and their slaves, he rejects the old doctrine which places the ownership of the soil, or of large tracts of the soil, in free

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village communities: he does not believe that land belonged to communities before it belonged to individuals. It will be difficult for the followers of Seebohm to answer Professor Maitland's brilliant arguments in favor of the gradual growth of the manorial system — the gradual subjection of free landowners and their land to seignorial authority. Apart from that fundamental question, this essay is a valuable contribution to Anglo-Saxon constitutional history.

In the third essay our author deals with the "dreary old question," What was the hide? But in his hands it ceases to be dreary, because he points out its bearing on larger problems. "That question about the hide," he says, "is 'pre-judicial' to all the great questions of early English history." He declares against Kemble's 30-acre hide, and believes that the normal tenement of the German settler in England, the typical holding of each free family, was a hide of 120 acres of arable land. This view is supported by arguments drawn from Anglo-Saxon documents and especially by the evidence of "Domesday Book."

> If we are right about this matter . . . some important consequences follow. We may once and for all dismiss as a dream any theory which would teach us that from the first the main and normal constitutive cell in the social structure of the English people has been the manor. To call the ceorl's tenement of 120 acres a manor, though it may have a few slaves to till it, would be a grotesque misuse of words, nor, if there is to be clear thinking, shall we call it an embryo manor, for by no gradual process can a manor be developed from it. There must be a coagulation of some three or four such tenements into a single proprietary unit before that name can be fairly earned.

In other words, this definition of the hide leaves little room for the Roman villa system with its population of serfs and *coloni*.

This work will hold a very high rank both as an exposition of "Domesday Book" and as a survey of the early institutions of England. Professor Maitland has fathomed the "deep speech" which the Conqueror had with his wise men at Gloucester in 1085. He has blazed through "Domesday Book" a new path leading far into the "Beyond." He has done what, in his concluding words, he hopes his successors may do: he has made more thinkable "the thoughts of our forefathers, their common thoughts about common things."

CHARLES GROSS.

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Life and Labour of the People in London. Edited by CHARLES BOOTH. Vol. IX. Comparisons, Survey and Conclusions (with an Abstract of Vols. I–IX). New York, The Macmillan Co., 1897. — 455 pp.

With the present volume Mr. Booth "completes the design originally laid down." In the earlier volumes he surveyed the working population of London, street by street and occupation by occupation, and applied the two standards of (1) earnings and (2) house accommodation. He now proceeds to institute a series of comparisons between "the 89 trade sections" in the following respects: apparent poverty, crowding, earnings, proportion of Londoners, numbers in families, ages of workers, proportion of employers to employed, and increase or decrease since 1861 in numbers engaged. Next, in order to put the reader in a position to control the vast mass of information already put at his disposal, Mr. Booth has had prepared a neat abstract of the contents of the nine volumes. This is excellently done, and may be looked over for its own sake with more profit than is usually the case with abstracts: for an example, one may refer to the paragraph on Jewish characteristics (p. 83). At this point Mr. Booth has accomplished his main purpose. What he has endeavored to present to his readers, he tells us in language of grave simplicity, "is a picture or a way of looking at things, rather than a doctrine or an argument. I have been glad to see my book furnish weapons and ammunition for absolutely opposed schools, and can even make shift to stifle my annoyance when it is occasionally quoted in support of doctrines which I abhor" (p. 440).

But Mr. Booth cannot be denied the right to draw some conclusions for himself from the material he has gathered; and these conclusions — from his own pen and that of Mr. Ernest Aves, who seems to agree with him on all important issues, though a slight difference of tone is here and there perceptible — occupy rather more than half the present volume. The most important of them will be anticipated by the careful student of the previous sections of the work. That "the modern system" of industry has its good sides as well as its bad; that the day of small businesses is by no means over; that the rôle of trade-unions, while considerable, must always be subordinate to wider economic influences; that regularity of earnings is more important than rates of wages; that moral weakness is the main source of irregularity of employment; that the existence of profit is the security of labor — these are some of the more prominent.

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The survey, however, is not yet a final one. Mr. Booth now proposes to devote three years' work and three more volumes to a study of "the forces for good or evil that are acting upon the condition of the population of London." Not till then will he be ready for "the ultimate balancing of hopes and fears that will form" his "final judgment." In view of this postponement of final judgment, it may be well to set down some of the doubts that occasionally come over at least one reader in making his way through Mr. Booth's instructive pages.

First, as to method. The work necessarily takes the form, to a large extent, of a manipulation and interpretation of census statistics. The sound judgment and moral earnestness of the editor and his assistants, however, save it from the trivialities that are apt to disfigure the work of the professional statistician. Yet the construction of schedules and the striking of averages tend to breed an unconscious affection for the schedule and the average, as such, that is likely to endanger the sense of relative magnitude. For instance, on page 279 we are told in how many, out of 206, occupations practiced in London the recognized hours of work are 48 per week, in how many 48–54, and so on up to 72. But before we can attach any particular significance to such statements we want to know the relative magnitude of the several occupations. There is at the end of the chapter a table of "the hours of work, overtime, and principal methods of remuneration" in all the 206 trades; but just the one piece of information which would add significance to it all, the numbers employed, is omitted. If the reader possesses the complete set of volumes and can give some time to putting the figures together, he can get the information for himself. But if it were given in this volume, it would be a great convenience, and it would show him where to lay the emphasis among the remarks which make up the rest of the chapter.

A more vital matter is the relation between evidence and conclusions. It were foolish to crave for perfection. Mr. Booth is modest to a fault about the value of his own conclusions, and never fails to remind us of the disturbing influence of personal temperament. But we fear that his remarks will not always be taken subject to these implied qualifications. Therefore we cannot but wish that Mr. Booth had seen his way to stating his conclusions rather more in the form of a summing-up upon the evidence. Perhaps some such mechanical device as is adopted in the reports of some recent commissions — the placing by the side of each paragraph of a reference to the particular

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sections of the evidence more particularly in mind at the time — would have put us in a better position to estimate the exact amount of weight to be given to Mr. Booth's several contentions. As it is, we are often given an estimate of relative probabilities and possibilities of a kind that reminds us — Mr. Booth will pardon the comparison — of the *Spectator:* that of the late Mr. Hutton, not of Addison. There is the same sober dignity; but in each case the utterances occasionally give one the impression of being just a little in the air. The necessity of adducing definite grounds for each opinion might have led to the postponement of some generalities, which at present seem hardly to have any close relation to the evidence as here set forth, though they may perchance be amply borne out by other considerations not adduced. Thus, the proposition, "where there is freedom and industrial energy state enterprise would do more harm than good," is a formula that requires definition in every one of its terms before it becomes significant; and this is a fair example of the aphoristic writing in which the authors not infrequently indulge.

From Mr. Booth's conclusions, so far as they are the direct outcome of his investigations, it may seem presumptuous even to appear to dissent. Mr. Booth has brought to his task all that high purpose, tireless industry, calm judgment, and the most liberal expenditure of time and money could accomplish; and he may naturally be supposed to be, and within a certain range undoubtedly is, his own best critic. And yet it must be observed that Mr. Booth's investigations have, after all, dealt with but one side of modern industry — the side of labor; and the habit of looking at a sociological problem from only one point of view is likely to color the judgment to a quite disproportionate extent when one comes to express an opinion on the general situation. This, I cannot help thinking, is the explanation of what seems to me the undue importance here attached to "the *entrepreneur* function," to business "management," "leadership," "enterprise." We all know how easy it is, when we think of the comfort produced among servants and work-people by our own personal expenditures, to come to regard ourselves as rather fine fellows because we "furnish employment." In the same way, those who attack the economic problem from the side of the workingman's weekly incomings are likely, quite unconsciously, to get an exaggerated impression of the beneficence of the employer as such. That business enterprise is enormously important, *as things now are*, is very true; that the socialism of Marx — together with much of the socialism of to-day — has overlooked its importance may still need to be said;

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but the impression produced by Mr. Booth's concluding chapters goes beyond this, and makes one think of "enterprise," as such, as being permanently estimable and altogether indispensable. Yet surely there is enterprise *and* enterprise. Much of the enterprise which, when successful, obtains large rewards is the enterprise which merely seeks to divert the demand from a competitor offering the same or a similar article. He must either be a very optimistic observer or apply a very subjective conception of *utility* who supposes that successful enterprise always means an increased utility to the consumer. The "sound judgment and business forethought" (p. 169) may be only the judgment and forethought which correctly anticipate the popular whim or devise the catching advertisement. Still more "enterprise" is at present demanded for the calculation of a fluctuating market; and how badly individualist initiative often does it the alternation of over-production and under-production sufficiently exemplifies. The rational-Socialist contention is that the value of modern individualist "enterprise" is largely relative to modern individualist competition. It is surely not a wild dream to look forward to conditions in which — at any rate for a large number of staple commodities — supply will be so adjusted to demand that much of the present individualist enterprise will be unnecessary, and the work of a good deal of the rest of it will be performed a good deal better.

Mr. Booth's generalizations as to actual conditions have turned out, in comparison with *The Bitter Cry* and *Darkest England* and *Merry England*, to be unexpectedly cheerful; and we cannot doubt that they are far more true. London produces on him "the general impression of a well-to-do, energetic people" (p. 441). "Here and there, as one walks, a foul back street is seen, or some woe-begone figure slips past. We may then turn to our statistics to learn what proportion such things bear to the rest." Many of us owe Mr. Booth a debt of gratitude for lifting from our spirits the weight of unrelieved misery. It is a great comfort to have really trustworthy statistics to which "one may turn to learn the proportions" of things. Yet now, having escaped pessimism, we must be on our guard against optimism; and certainly not a little of Mr. Booth's language would seem unguarded. His belief in the merits of enterprise is closely connected with a confidence, like that of John Stuart Mill, in the formative effect of competition on character; and he has the courage to apply this to the working classes. Accordingly, we have passages such as this: "*Every power* of man is stimulated, guided and brought to bear on the desired object." "To *talent*, even

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of a very humble description, a career is *always* open" (p. 168). Over against these, indeed, may be set other passages which counteract the seeming exaggeration. But, as the indolent reader will not make such comparisons, we may be allowed to regret even an occasional absence of caution. The "powers," the "talents" for which the present *régime* furnishes a stimulus are not all the powers and talents of man. We can each of us easily draw up a list of the traits which are likely, on the whole, to enable a workingman to lead a prosperous life. We can, with equal ease, draw up a list of those that may make him a better Christian, a pleasanter companion, a more interesting personality, without landing him in a house of his own or a post-office annuity. "The self-made man" is a characteristic feature of modern competitive life, and we know how much the world owes to him; but we also know the rough and ready judgment of mankind upon him. The higher sort of Socialism is in large measure a protest on behalf of the non-"economic" qualities of man; and one could have wished a more steady recognition of this in a work, on the whole, so sane and broad-minded.

W. J. Ashley.

Harvard University.

Baumwollproduktion und Pflanzungswirtschaft in den Nordamerikanischen Südstaaten. Von Dr. Ernst von Halle. Erster Teil: *Die Sklavenzeit.* Staats- und socialwissenschaftliche Forschungen, herausgegeben von Gustav Schmoller. Band XV, Heft 1. Leipzig, Verlag von Duncker und Humblot, 1897.—xxiv, 369 pp.

Dr. von Halle—who is, it will be remembered, the author of the little book on *Trusts* which appeared a few years ago—has continued his investigations of American economic institutions and phenomena, and now presents us with a study of the industrial and social condition of the Southern states before the Civil War. The second half of the work, which is promised within a year, will deal with the period since emancipation. In the present work, which is based on personal inquiries and observation, as well as on literary researches, the author has made cotton culture the central point of his discussion; because, as he says in his preface, his studies soon convinced him that it was cotton production which "was destined to furnish the key to the solution of the problem of Southern economy throughout the entire nineteenth century" (p. ix).

In Book I Dr. von Halle brings together nearly all the references by early writers to cotton culture in this country previous to the

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Revolution, points out the causes which retarded both cotton production and cotton manufacturing, gives an interesting account of the social and economic status of the South at the end of the eighteenth century, and describes the results to Southern agriculture of the invention of the saw gin.

In Book II he takes up some forty pages in considering the botany, chemistry, geology and climatology of the cotton states; in explaining the methods of planting, cultivating and harvesting the crop; and in describing the diseases and enemies of the plant, *etc.* The propriety of giving so much space to work purely technical in its nature in a treatise which is professedly economic in character may well be questioned. The same may be said of Chapter V of Book III, where sixty pages are devoted to a discussion of land legislation, the development of means of transportation, and the elements and the distribution of population in the Southern states. Indeed, perhaps the chief criticism which can be passed upon the book is that its real contents are in no way adequately expressed by its title. Not less than half the work deals with subjects which, at most, can be said to bear only an indirect relation to cotton culture. It should be stated in passing, however, that section 5 of the above chapter contains some interesting statistics on the distribution of the white and black races in the cotton states and the border states, and on their relative rates of increase. Chapter VI gives the statistics of cotton production, the distribution of the crop among the several states and the part which the exports of this staple have played in the cotton trade of the world. Just the opposite criticism to that made above may be passed upon this chapter. The text adds little to the information furnished by the tables, containing, as it does, little more than a repetition of the facts already found there and a statement of the author's opinion as to the value to be attached to these figures.

In Chapter VII the author approaches the most interesting and the most important part of his subject — the relation of cotton culture to slavery. Dr. von Halle sees clearly the connection that existed between these two Southern institutions, which, he says, were "the two poles between which hung the whole industrial and social sphere of this part of the land." In this chapter, which treats of the "Movements and Changes in the South previous to the Election of 1860," he has, unfortunately, failed to set forth tersely or very clearly just what effect the culture of cotton did have upon the widening of the national domain and the corresponding expan-

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sion of slavery. Instead of dealing with the economic forces which brought about these changes, he has entered at some length into a discussion of the political and constitutional sides of the question. There was little need of this discussion even for German readers, as his own countryman, von Holst, had already treated the same subjects in detail; and for American readers, it, of course, adds nothing to the recent works of Rhodes, Wilson and Burgess. Dr. von Halle's account of the effect which the westward territorial expansion and the increase in cotton growing had upon the domestic and foreign slave trade is more appropriate and valuable material, although Du Bois has quite recently covered the same field.

One may take exception to the author's statement (p. 189) that without negro slavery and its use on the large landed estates of the South there would not have been such a rapid settlement of the South or such a sudden increase in cotton production. Early writers in the South expected that the adoption of cotton culture would lead to an increase of small farms cultivated by white labor; and this, indeed, seems to have been the tendency of the new movement [1] until the advantages of cotton culture for slavery made themselves felt. The climatic disadvantages, which, according to Dr. von Halle, prevented immigrants from seeking the South and kept white labor out of the cotton fields, were, for the most part, mere fictions of Southern *ante-bellum* writers. The increase of white labor in cotton production since the war, and the migration from the North and from Europe to Texas and to other parts of the South, have shown that throughout the greater part of the cotton belt there are no climatic restrictions on the use of white labor in agriculture. Indeed, a Southern writer, himself a son of one of the leading advocates of slavery in 1860, has recently asserted that the supposed climatic disadvantages in the use of white labor do not exist even for the alluvial regions, and that the segregation of the colored population there "was effected solely by economic influences and has been maintained by a race prejudice." [2]

Chapter VIII is taken up with a well-written description of the various social classes of the "Old South" — the slaveholders, the slaves, the free negroes and the poor whites. Perhaps the most interesting and valuable chapter in the whole book is Chapter IX, where the author discusses "The Economic System of Slavery Times

[1] Ramsay, History of South Carolina, II, 448, 449.

[2] Harry Hammond, "The Culture of Cotton," in "The Cotton Plant," Bulletin 33, Office of Experiment Stations, United States Department of Agriculture, p. 253.

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and the Methods of Cotton Cultivation." This chapter is almost the only one in which Dr. von Halle confines himself strictly to his subject. He gives here a thorough discussion of the influence which cotton culture had upon the distribution and concentration of the slave population of the South, of the methods of employing this labor and of cultivating the soil, of the size and management of Southern landed estates, and of the influence which cotton raising had upon the price of slaves and on their movement southward from the border states. The text is illustrated throughout with well-arranged statistical matter compiled mainly from the censuses of 1850 and 1860.

In Chapter X the author has supplemented his historical and descriptive account of Southern conditions by a discussion of the slavery theories of various writers, European and Northern, as well as Southern. He reviews in an interesting manner the theories of De Tocqueville, Harriet Martineau, Carey, Cairnes, Calhoun, McCay and Helper, as well as those of many minor writers, whose bombastic rhapsodies do not really deserve the serious consideration which he gives them. Finally, in Chapter XI, the author gives an account of the "System and Effects of Plantation Agriculture."

Dr. von Halle has an extensive acquaintance with the literature of his subject, and not the least service which his book can be made to render to future students of Southern institutions and history will be that of acting as a guidebook to Southern *ante-bellum* literature. If the author seems at times to attach too much importance to the writings of both the defenders and the opponents of the slave system during the heated controversy over this subject, it must be said that his statements are usually exact and his conclusions warranted by the evidence. There are a few historical blunders, as, for instance, on page 199 (note 4), where it is stated that the petitions for the abolition of slavery in the District of Columbia were presented by "Expräsident Charles Francis Adams."

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The Liquor Problem in its Legislative Aspects. By FREDERIC H. WINES and JOHN KOREN. Boston and New York, Houghton, Mifflin & Co. 1897. — vi, 342 pp.

In the year 1889 fifteen gentlemen who were interested in questions of progress began to meet from time to time and to exchange opinions on various social topics. Among the papers read and discussed at these meetings, and afterwards published, were President

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Seth Low's essay on "The Government of Cities in the United States" and Professor William M. Sloane's on "Pensions and Socialism." In 1893 this group decided to enlarge its membership to fifty, and to make a systematic investigation of the liquor problem in the United States. Four sub-committees of this "Committee of Fifty" were appointed to report, one on the physiological, one on the legislative, one on the economic and one on the moral aspects of the question. The sub-committee on the legislative aspects consisted of Charles W. Eliot, Seth Low and James C. Carter. These gentlemen appointed Messrs. Wines and Koren to conduct the investigation. The present volume is the substance of their report.

The investigation took a wide range. Inquiries were made in many different sections of the country, and concerning all the important systems of legal regulation of the liquor traffic that have here been tried. A full account is presented of the history and practical value of prohibition in Maine and Iowa, of the South Carolina dispensary system, of the restrictive system in Massachusetts, of the high license system in Pennsylvania, of the Ohio and Indiana laws and of the Missouri local option law. The work has evidently been done with great care. No important fact has been overlooked, and no attempt has been made to find in the evidence a support for any view or policy. The criticism throughout is discriminating, and the inferences are those which any dispassionate judgment must draw from the data. No such review of the whole case for and against legislative control of the sale of intoxicating drinks has ever before been made, and nowhere else can the conscientious voter find so clearly and so fully presented the information that he requires to enable him to see his duty.

The three gentlemen of the sub-committee have themselves made a summary statement of results and inferences which they unite in signing. Prohibition, they declare, has been partly successful but largely a failure, and has brought with it many concomitant evils, particularly a distrust of local self-government and a centralizing tendency. Local option has much to commend it, but the Massachusetts plan of annual voting on the question is inferior to that of Missouri, where the issue can be raised only once in four years. The licensing system in all its forms is open to grave political objections; no other plan does so much to keep the liquor traffic in politics. A tax law, like that of Ohio, is so far an improvement. Almost every sort of liquor legislation, however, creates some specific evil in politics.

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Wherever high-paid offices are created by liquor legislation, those offices become the objects of political contention. When a multitude of offices are created in the execution of liquor laws, they furnish the means of putting together a strong political machine. Just this has happened under the dispensary system in South Carolina, where a machine of great capacity for political purposes has been created in a short time, with the governor of the state as its engineer. . . . The activity of liquor dealers' associations in municipal politics all over the United States is in one sense an effect of the numerous experiments in liquor legislation which have been in progress during the last thirty years. The traffic, being attacked by legislation, tries to protect itself by controlling municipal and state legislators.

The committee concludes that "it cannot be positively affirmed that any one kind of liquor legislation has been more successful than another in promoting real temperance"; but that, nevertheless, "the wise course for the community at large is to strive after all external, visible improvements, even if it be impossible to prove that internal, fundamental improvement accompanies them." To this they might well have added — what their volume clearly demonstrates — that the only "external, visible improvements" which experience has shown to be such in fact as well as in name are the products of moderate measures that have aimed at maintaining order and decency rather than at a transformation of human nature or at the realization of utopias.

FRANKLIN H. GIDDINGS.

La disoccupazione e l'assicurazione degli operai. Da C. F. FERRARIS. Roma, Nuova Antologia, 1897.

The question of the unemployed is one of permanent interest. While, on the one hand, the expedients for giving employment and for satisfying the most urgent needs of the situation are multiplying in all countries, on the other hand grave questions as to the causes and the remedies of enforced idleness are bringing about wide researches on the part of students. Among the most recent publications on the question is that of Professor Ferraris, of the University of Padua, who has profited by the ample literature that already exists on the subject, and who sums up with much clearness and vigor the principal causes of the lack of employment, examining the remedies that have been tried in the chief countries and treating in a fresh, broad way the newer arguments for the adoption of the system of insurance against unemployment.

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Ferraris makes a minute analysis of the causes of unemployment, emphasizing especially those of a more strictly economic character and, above all, those connected with the influence of technical progress. Passing thence to the remedies, he, as a state socialist and a believer in social reform based on governmental action, declares that insurance against involuntary idleness is as much a social duty as are philanthropy, elementary education and insurance against sickness, accidents or old age. I shall not follow the author in his diligent and learned analyses and classifications of the various remedies that have been proposed, — relief work, labor colonies, labor bureaus, *etc.*, — but shall limit myself to the study that he makes of the proposition to insure laborers against involuntary idleness, for this presents the chief interest.

The first difficulty which this proposition meets is that of finding some law, some normal action, in a phenomenon so irregular in appearance as unemployment. Ferraris, as a first attempt to solve the difficulty, makes a laborious and acute analysis of the data relating to the unemployed that are contained in the German census of 1895 — an analysis that throws not a little light on the different degrees of intensity in unemployment, according to the forms of production, age, locality, season, *etc.* He helps us to see a certain regularity in the duration of unemployment, and thus lays a foundation for the technical arrangement of the insurance scheme.

After summing up the results of a few experiments thus far made, the author, in the last part of his work, devotes himself to the practical problem of organizing a system of insurance. He demands that this be undertaken by the public authorities, who alone — since the evil is so deep seated and extended — can really attack the problem successfully or can bring to the work means adequate for accomplishing the result in the public interest and with the greatest economy. The necessary funds are to come from three sources : (1) premiums paid by the insured, who must as far as possible share in the expense; (2) contributions of the employers, upon whom rests the obligation to look after the workman in all the contingencies of his occupation; and (3) grants from the state and other governmental bodies, so far as they may be indispensable to the carrying out of the scheme. As regards these technical arrangements the author goes into the most minute particulars.

While he believes in the efficiency of governmental action, especially in the various forms of labor insurance, Ferraris does not claim that this provision will constitute a radical remedy. But in

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the face of the widespread uncertainties, doubts and illusions as to the complete reconstruction of industrial society, he declares that he is satisfied for the time being with the remedies which, though modest, may yet accomplish some good. This is not the place to discuss the question of the efficacy of state intervention. Those of us who take substantially the materialistic view of history have only very slight faith in it; but, at all events, we need not refuse to concede that in certain cases it may accomplish something. In view of the actual state of the question and of the experiments that have been made, it appears probable that in certain countries insurance against unemployment will soon come to augment our stock of social legislation. How far this system may go it is hazardous to predict, especially in view of the technical difficulties in the way; but as regards Italy, for whom, above all, Ferraris has written, it is easy to prophesy — remembering the long and painful travail of the yet unborn law for insurance against accidents, as well as the embryonic condition of that for the pension insurance — that there will be a long delay in securing this particular form of insurance.

UGO RABBENO.

UNIVERSITY OF MODENA.

Introduction to the Study of Economics. By CHARLES JESSE BULLOCK, PH.D., Instructor in Economics in Cornell University. New York, Silver, Burdett & Co., 1896. — 511 pp.

Outlines of Economic Theory. By HERBERT JOSEPH DAVENPORT. New York, The Macmillan Company, 1896. — 381 pp.

Outlines of Elementary Economics. By HERBERT JOSEPH DAVENPORT. New York, The Macmillan Company, 1897. — 280 pp.

The last quarter of a century has been extremely productive in economic thought and research. Jevons, Walras, Menger, Böhm-Bawerk, von Wieser and Clark have revolutionized method and terminology. The historical and statistical school has placed at our disposal an enormous mass of material for illustration, comment and reflection. Marshall, Wagner, Hadley and Pareto have each essayed the *magnum opus* of combining method and material in order to become the Adam Smith, or at least the John Stuart Mill, of the present generation. These are but a few names among those of many who have taken an active part in the movement; and the future historian of economic thought will have an extremely difficult task,

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if he attempts to trace a logical order of development; while he will have a very ungrateful task, if he attempts to decide rival claims to priority and originality of thought.

Now commences — as always after a productive period — the flood of secondary works. We are inundated with "Manuals," "Text-books," "Introductions," "Outlines," "Elements" and "Principles" of political economy, not to speak of entire reconstructions of the old science and the formulation of brand-new principles of a simplicity and comprehensiveness never before heard of. The former activity is easily understood and justifiable. Each one who has drunk at the sources feels an uncontrollable desire to retail the life-giving liquid in a diluted form to the perishing nations. To abandon metaphor, there is a real necessity of popularizing the new terminology and method and making them intelligible to the many. This is scientific progress. The second tendency is due to shallow minds, to whom a new principle immediately suggests all sorts of vague analogies, which they hasten to sketch out under the belief that they are making new discoveries. The doctrine of evolution gave rise to the same noxious crop.

Under these circumstances, any author coming before the public with a new systematic political economy does so at considerable risk. Whatever its merits, it is apt to be received with a certain degree of impatience. Men are asking, not for more treatises on political economy, but for *the* treatise or *a* treatise which will accomplish a definite purpose. There is room, I apprehend, for a text-book for beginners; also for a work which will throw into clear form the latest results of economic thought and research; and there is, of course, always a place for original thought and new discoveries.

Dr. Bullock's work is admirably adapted to fulfill the first purpose. He presents in clear, simple form the modern theories of marginal utility and value. He preserves enough of the traditional divisions into consumption, production, exchange and distribution to serve as a framework for theories and facts. Such a formal division I believe to be not only useful and helpful in dealing with the complicated phenomena of economic life, but absolutely necessary for the beginner if he is to follow economic analysis easily. At the same time, by emphasizing the fundamental principles of value throughout his treatment of all these departments, the author makes clear the unity of the whole subject, so that the beginner will be in little danger of believing that production has no relation to consumption or that distribution takes place without exchange. Theory and

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application also go hand in hand; and a judiciously chosen bibliography aids the student to further study.

Mr. Davenport's works seem to me rather less satisfactory. The larger one "was not originally projected as a text-book" (preface), although there is an elaborate apparatus of questions and quotations obviously intended for class-room work. In many cases the quotations do not support the text, and apparently are not intended so to do. Such constant presentation of conflicting views is sometimes thought to be the true pedagogical way of conveying truth; but for beginners this method is more often confusing than enlightening.

Nor can Mr. Davenport's work be regarded as a good digest of the newer economic views. There are many interesting discussions, but it is difficult to understand the arrangement of chapters. While discarding the traditional divisions of production, exchange, *etc.*, he retains the distinction between science and art without any very clear-cut line of separation between the two. This leads to considerable repetition of topics without essential difference of treatment — as in the two sections on population, pages 106 and 324. There are also apparent contradictions in his definitions which will be apt to trip up the reader. For instance, we find the following passage:

> Capital is wealth, other than nature and natural forces, used as an aid to human energy in the reproduction of wealth. It is to be noted that this definition conceives capital from the social instead of the individual point of view. So far as concerns questions of production and reproduction of wealth, nature and natural forces are to be regarded as forms of capital [p. 125].

The last sentence seems to contradict the first, and it requires considerable effort of thought to supply the hiatus.

The use of the term value, too, is not always clear. Thus, on page 39, it is said that "value measures sacrifice and not well-being"; while on the next page, speaking of a purchaser, he says: "He finds his personal schedule of values to differ from the market schedule greatly to his own advantage"; and on the next page we have the definition: "The value of a thing is its power in exchange by virtue of its utility of commanding sacrifice." Is there, then, one value or two values? And is the fundamental idea sacrifice, well-being or utility? It may be that a thorough and minute study of the work would show that Mr. Davenport is consistent in his use of terms all the way through; but has the author of "outlines" the right to demand such minute study as is given only to the masters? Should

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not the "outlines" stand out of themselves with reasonable distinctness? And should they not be reasonably complete on all sides? One is struck by the contrast between the elaborate treatment of rent and the meagreness of the chapter on population; similarly, Böhm-Bawerk's theory of interest is given in full, while profit is briefly defined as a species of wages. Some parts of the book, too, are much more thoroughly worked out than others. As a matter of detail, I should like to know why a book published in 1896 gives the population of the United States in 1890 as "estimated" at 62,032,672. Is this irony?

At the same time, it is not to be denied that there is a good deal of vigorous thinking and vigorous writing in this book. In the hands of the author I can imagine it to be stimulating to students. It is encouraging as showing the fermentation that is going on in the minds of teachers of economics. The process (so far as I can judge) has not in this case indeed reached its completion, and the results do not always appear to be fully clarified.

The "Elementary Economics" is condensed from the larger work, with the same arrangement and order of ideas.

RICHMOND MAYO-SMITH.

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RECORD OF POLITICAL EVENTS.

[From May 9 to November 10, 1897.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — The activity of the government in this field has been manifested most conspicuously in connection with Cuba, Hawaii and the Bering Sea seal fisheries. **The situation in Cuba** was made the subject of careful consideration by President McKinley's administration during May and June, as preliminary to the appointment of a minister to Spain. A special commissioner, Colonel W. J. Calhoun, was despatched to Cuba in May to investigate and report upon various subjects of controversy between the United States and Spain. Pending his report, the President, on the basis of consular reports as to suffering among American citizens in Cuba, recommended to Congress, in a message of May 17, that an appropriation be made for their relief. An act was passed three days later devoting $50,000 to this purpose, of which only a fifth had been expended by September. On May 20 the Senate passed, by 41 to 14, a resolution declaring that war existed between Spain and the Cubans, and recognizing the latter as belligerents. It was well known that President McKinley disliked the tendency of Congress to encroach upon what he, like his predecessor, regarded as a function of the executive, and the resolution, accordingly, was not considered by the House. At the beginning of June Colonel Calhoun returned from Cuba and made his report to the President, who based upon it demands for indemnity from Spain for the ill-treatment of certain American citizens. On the 16th the appointment was announced of Mr. Stewart L. Woodford, of New York, as minister to Spain. Mr. Woodford presented his credentials on September 13. His instructions, which were communicated to the Spanish government, were not made public, but were understood to embody serious representations as to the necessity of terminating the existing situation in Cuba. Newspaper reports that he had presented an ultimatum to Spain gave rise to manifestations of popular feeling against the United States in many parts of the country; but the truth of the reports was officially denied. The change of ministry and of policy in Spain (*infra*, p. 753) delayed the reply to Mr. Woodford's instructions, and it was not transmitted to Washington till October 27. No authentic information as to its purport was made public; but the sailing of a filibustering expedition from New York, just before, gave rise to reports that Spain laid much stress on the failure of the United States to fulfill her obligations as a neutral. — On June 16 the President formally resumed the policy of the last preceding Republican administra-

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tion by sending to the Senate a treaty for **the annexation of Hawaii.** The negotiation of such a treaty had been expected, and commissioners for the purpose had been sent to the United States before the inauguration of Mr. McKinley; but the immediate impulse to the conclusion of the agreement seems to have been given by exigencies in the formulation of the sugar schedule of the new tariff (*infra*, p. 738). In connection with the annexation the treaty provided that a special system of laws dealing with public lands should be enacted by Congress for application to Hawaii; that, until otherwise provided by Congress, the administration of the islands should be carried on by the President of the United States, in such manner and by such persons as he should direct; that existing treaties between Hawaii and other nations should cease forthwith, but that municipal legislation and commercial relations between Hawaii and the United States should remain unchanged; that the public debt of Hawaii, up to $4,000,000, should be assumed by the United States; and that further immigration of Chinese into Hawaii, as well as into the United States from Hawaii, should be subject to the restrictions of the laws of the United States. The announcement of the treaty was followed by a protest from Japan, chiefly on the ground that rights of Japanese, both civil and political, would be summarily destroyed by the termination of Hawaiian treaty relations. China objected to the clauses touching Chinese immigration; and the deposed Queen Liliuokalani filed a protest against what she designated as the spoliation of the natives and the practical confiscation of crown lands. The treaty was not brought up for action in the Senate at Washington during the extra session, but in September the Hawaiian Senate ratified it unanimously. — In respect to **the seal fisheries** the efforts of the administration have resulted in the arrangement of two different conferences of interested powers on the method of preserving the herds. Great Britain, in April, declined to accede to the proposals of the United States for a suspension of sealing for one season and for a conference looking to the revision of the Paris tribunal's regulations for pelagic sealing. Under date of May 10, Secretary Sherman sent a dispatch in which the attitude of Great Britain in respect to the matter was very sharply censured, and she was rather bluntly charged with bad faith, in not performing her proper share in the work of patrolling the seas and enforcing the prescribed regulations. Mr. Sherman's note concluded with another request for a conference. Lord Salisbury's reply, dated July 28, agreed to a meeting of experts named by Great Britain, Canada and the United States, for the purpose of reaching precise conclusions as to the present size and condition of the Pribyloff herd. The American administration had been intent on a conference including representatives of Japan and Russia, and understood that Lord Salisbury had agreed to this. Accordingly, those two governments were invited to send delegates to Washington. But at the beginning of October Lord Salisbury declared that Great Britain adhered to her original idea, and would not attend if Japan and Russia were represented.

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Accordingly, the plans were changed so as to provide for two separate conferences, — one of representatives of the United States, Japan and Russia, the other of representatives of the United States, Canada and Great Britain. The former conference resulted, after a short session, in a treaty between the powers concerned, which was signed November 6. The second conference met November 10. — **Negotiations on international bimetallism** were carried on throughout the summer at the chief European capitals by the commission named by the President (last RECORD, p. 358). The result of the negotiations with Great Britain and France were made public in October. France agreed to open her mints to the free coinage of silver at the ratio of 15½ : 1 on condition that Great Britain would coöperate in accordance with the proposals of the United States. These proposals included, with others, the opening of the Indian mints to free coinage, the substitution of silver for gold by the Bank of England to the extent of one-fifth of the note-redemption reserve, and the annual purchase by Great Britain of £10,000,000 in silver. In response to the British government's inquiry the Bank of England agreed to the suggested use of silver in its reserve, on condition that France open her mint to free coinage, and "that the prices at which silver is procurable and salable are satisfactory." The Indian government, to whom was referred the opening of the Indian mints, unanimously opposed such a step, and this view was approved September 16 by the British cabinet. With this action the negotiations, so far as made public, ended.

INTERNAL ADMINISTRATION. — Up to the final passage of the new tariff bill the condition of **the finances** manifested the same reassuring features that were chronicled in the last RECORD. Anticipatory importations swelled the revenue to such an extent that the net deficit at the end of the fiscal year, June 30, was only $18,623,108. With the passage of the Dingley Law the reaction at once appeared, and a huge excess of expenditure developed, which by November 1 had reached a total for the four months of over $27,000,000. — In respect to **the currency** the administration has been exceptionally fortunate. The gold reserve has remained throughout the period at about $150,000,000. Trade conditions have all been favorable to the maintenance and even to the increase of the treasury's store of gold. Widespread crop failures abroad have been accompanied by good crops at home; a very marked revival of business has developed since early summer; and the product of the new Klondike gold fields has found its way in considerable measure to the treasury vaults. In the autumn months the administration was in a position not only not to encourage, but even absolutely to reject, the offers of gold for deposit. Simultaneously with these conditions a great fall in the market price of silver contributed to weaken the position of the free-silver party. Despite this, however, the commission appointed by President McKinley gave evidence of activity in different European centres in the interest of international bimetallism. And while this official body was working abroad

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for the rehabilitation of silver another commission, unofficial and non-political in character, but representative of a convention of financiers and business men held last January at Indianapolis, was considering projects for the reformation of our currency without reference to international action. This commission, headed by ex-Senator Edmunds, was appointed as the result of the failure of Congress to act upon the President's recommendation of an official commission (*infra*, p. 739), and was understood to have been constituted with some reference to the desire of the administration. It is expected to report during the winter. Meanwhile, on October 29, Secretary Gage submitted to the cabinet and made public an elaborate plan of currency reform, which proposed (1) the establishment of a separate department in the treasury, to be known as the Issue and Redemption Division; (2) the issue of refunding bonds, bearing 2½ per cent interest and payable in gold; and (3) the amendment of the National Bank Act so as to promote a great increase of note circulation. — President McKinley's attitude in reference to **civil-service reform** was made perfectly clear by an order of July 28, which, despite the confident anticipations of influential Republican adversaries of the reform, confirmed and promoted the policy of the preceding administration. With some slight modifications of the existing rules as to classification, the President ordered that no removal should be made from any position subject to competitive examination except for just cause and upon written charges, and after full opportunity for defense should have been given to the accused. Before this, the power and method of removal had not been affected to any great extent by the rules of the service, and the new rule was generally regarded as an effective supplement to those governing appointments. During September several cases of violation of this rule were brought before the courts on applications of the removed persons for judicial relief. In general, the courts followed the opinion rendered by Judge Cox at Washington September 14. In that case a postal officer applied for an injunction to restrain the postmaster-general from removing him except in accordance with the new rule. The court refused the writ, holding (1) that a court of equity had no jurisdiction in matters of removal from office; (2) that the rule in question was not authorized by the civil-service act of 1883; (3) that the rule was within the authority of the President to prescribe, and was enforcible by the President through his administrative control over his cabinet, but not through the courts. A diametrically opposite opinion was rendered November 9 by the federal district court in West Virginia, and the matter has been taken to the higher courts. — Under authority embodied in the Sundry Civil Appropriation Bill, the President appointed, at the beginning of July, a new Nicaragua Canal Commission, consisting of Admiral J. G. Walker and two engineers, from military and civil life respectively. The commission is to make a detailed study and report upon the practicability and cost of a canal. In May the Nicaraguan government retracted the statement involved in the note of Minister Rodriguez during the preceding

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winter (see last RECORD, p. 359), to the effect that the charter of the existing canal corporation had been forfeited. Nicaragua now declared that the communication had been made to Secretary Olney under a misunderstanding. — A treaty concluded in September by the Dawes Commission with the Creek Nation, for the abandonment of their independent government and the allotment of their lands in severalty, was in the following month rejected by the legislature of the Indians. On the other hand, the agreement reached last April with the Choctaws and Chickasaws was ratified by both tribes at the beginning of November. — The foreclosure sale of the Union Pacific Railway (see last RECORD, p. 356) was effected November 1. Under pressure of a newspaper agitation against the terms first agreed upon and of steps by the government looking to postponement of the sale, the reorganization committee of the company consented in October to raise its bid so as to assure to the government $58,028,532.76, the full amount of its claim for principal and interest. The sale was carried out under this arrangement, and the financial connection of the government with the road terminated.

CONGRESS. — Substantially the only work of the session was the completion of **the new tariff law**, which at the beginning of the period under review had been adopted by the House and had just been reported to the Senate by the committee on finance. The bill was debated in the Senate from May 25 to July 7, when it passed, with amendments, by 38 to 28 — one Democrat and two silver Republicans voting with the majority, but most of the Populists and silverites refusing to vote. A conference committee then considered the measure till July 17. A report agreed to on that day was adopted by the House on the 19th, — 189 to 115, — and by the Senate on the 24th, — 40 to 30, — becoming law on the latter date by the President's signature. The general character of the bill as passed did not differ from that of the original draft, as described in the last RECORD. Modifications made by the Senate and in conference were confined for the most part to small adjustments of rates, significant only to the special industries concerned. Among the more important changes were the following: the transfer of hides from the free to the dutiable list; a heavy increase of rates on linens; a readjustment of the sugar schedule so as apparently to give refiners more protection than in the House bill, though much less than that proposed by the Senate; and the imposition of an equivalent countervailing duty on articles on which an export bounty or grant has been paid by the country of origin. Owing to doubts in the Senate as to the revenue-raising capacity of the House bill, various provisions looking to additional income were proposed at different stages of the discussion, among them a duty on tea, an increase of the tax on beer, and a stamp tax on transactions in stocks and bonds. None of these propositions, however, survived the conference committee. The retroactive provision which had been inserted in the House bill to prevent the loss of revenue through anticipatory importation was dropped, and the new duties went into effect

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from the date of the approval of the law by the President. Shortly after the passage of the act an important question was raised as to the effect of a clause imposing a discriminating duty of tenper cent additional on goods imported "in vessels not of the United States," save where otherwise provided by treaty. This clause had been a feature of all our tariff laws since 1824, but had been modified, in the latest act, so as to apply the additional duty to goods "which, being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country." It was soon disclosed that this amendment, which had attracted no attention during the discussion of the act in Congress, had been made at the instance of persons who had long been trying, but in vain, to curtail the privileges through which the Canadian Pacific Railway was enabled to compete with the trunk lines of the United States in transcontinental traffic. It was held that, under the new law, Asiatic goods landed in British Columbia for transportation by the Canadian Pacific in bonded cars to Eastern cities of the United States must pay the discriminating duty. The Treasury Department promptly applied to the attorney-general for an interpretation of the new clause, and on September 21 Attorney-General McKenna gave an opinion which held (1) that the new clause, like the old, regarded only transportation by sea, and (2) that in this second aspect no very important change had been effected in the law. — Of other legislation by Congress there was very little. Upon the passage of the tariff bill, the President, on the same day, sent to Congress a message urgently recommending the immediate creation of a non-partisan commission to report upon such changes in the currency system as might be necessary and expedient. The House at once passed a resolution embodying the desired provisions; in the Senate there was no hope of action, and the matter was referred to the regular committee. During the consideration of the tariff by the Senate the House continued its suspended animation by adjournment at three-day intervals, despite the discontent of both Democrats and Republicans who wished for action on various measures. The embargo was raised only for the passage of the delayed appropriation bills and one or two other routine measures. In the Sundry Civil Appropriation Bill an animated controversy over President Cleveland's orders establishing forest reservations (last RECORD, p. 356) was settled by a provision suspending the orders till March 1, 1898, and authorizing President McKinley to revoke or modify them at his discretion. Upon the final passage of the tariff bill, Speaker Reed made the announcement of House committees, which, with the exception of ways and means, accounts and mileage, had been held in abeyance. The chairmen of the most important were as follows: foreign affairs, Hitt, of Illinois; appropriations, Cannon, of Illinois; judiciary, Henderson, of Iowa; banking and currency, Walker, of Massachusetts; coinage, Stone, of Pennsylvania; commerce, Hepburn, of Iowa. The session ended on July 24, the day the tariff bill was passed.

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THE FEDERAL JUDICIARY. — In the case of The Interstate Commerce Commission *vs.* Railway Companies, the supreme court held, May 24, that Congress did not bestow upon the commission the "power of prescribing rates, either minimum or maximum or absolute," and therefore did not intend to empower the commission to determine in reference to the past what rate was reasonable and just, and then call upon the courts to enforce such rate in the future by peremptory order. In another case involving the Interstate Commerce Commission the court decided, November 8, that under the long-and-short-haul clause the railroads could in first instance, without appealing to the commission, make allowance in their rate schedules for differences of circumstances between two routes due to the competition of other railways and of water routes. In National Bank *vs.* Nebeker the court held that the clause of the National Banking Act taxing the circulation of such banks was not a bill for raising revenue in the sense that it must, in order to be constitutional, originate in the House of Representatives. During May and June the leading officials of the "Sugar Trust" were brought to trial at Washington on criminal charges of refusing to answer certain questions propounded by a Senate committee of investigation. The principal issue turned on the refusal to state what sums had been contributed by the corporation to party campaign committees at the times of elections. In each case the defendant was acquitted, chiefly as a result of the contention that the specific question at issue was not such as to fall within the scope of a Senate committee's inquiries. — In October President McKinley accepted the resignation of Associate-Justice Field, of the Supreme Court of the United States, to take effect December 1. Justice Field's term of service, thirty-four years and seven months, is the longest in the history of the court.

STATE ELECTIONS. — On November 2 elections occurred in fourteen states for various legislative, executive and judicial officers. Interest in the results centred chiefly on the evidence that might be presented as to the trend of party feeling on national issues. From this point of view the most important features of the returns were as follows: The Democrats made conspicuous gains in New York, Kentucky, New Jersey and Ohio, carrying the first two states by substantial majorities, but failing to overcome entirely the adverse majority in the latter two. The Republicans held their own in Pennsylvania, Massachusetts, Iowa and Maryland, securing in the last named a legislature that insured the election of a Republican United States senator to succeed Mr. Gorman. In Virginia, Colorado and Nebraska the voting gave results showing no material deviation from those of last year.

VARIOUS STATE LEGISLATION. — Constitutional changes have been acted upon as follows: New Jersey, September 28, ratified by popular vote, though by a very narrow majority, an amendment prohibiting lotteries, pool-selling, book-making or gambling of any kind; at the same time, an amendment opening the suffrage to women at school elections was defeated.

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Tennessee voted down, August 5, a proposition for a convention to revise the constitution. Connecticut ratified, October 4, an amendment specifying that the ability to read the constitution or laws, which had long been a qualification for voting, should mean ability "to read in the English language." Maryland rejected, November 2, an amendment requiring competitive examinations for appointments in the civil service. — The perennial antithesis of **state legislature and national judiciary** has been expressed in the following instances: a Pennsylvania law imposing a tax of three cents a day on every alien employed as a laborer in the state was held unconstitutional, August 26, as denying the equal protection of the laws which is required by the Fourteenth Amendment. In South Carolina, early in June, the state dispensary authorities were enjoined by the circuit court from interfering with the sale of liquor in the unbroken "original packages" in which it came from other states. A large original-package liquor business was in consequence developed in opposition to the state dispensaries; but it appeared in September that the state authorities were making some headway against this by various forms of pressure through which the railroads were induced not to carry liquor for the original-package concerns. In Tennessee the law prohibiting the sale of cigarettes was declared unconstitutional, October 2, as in conflict with the power of Congress over interstate commerce. In Kansas a controversy developed in August between the state government and the national courts over the refusal of the former to permit a New York insurance company to do business in the state. The national court enjoined the state officials from interfering with the company; the officials brought the company on *quo warranto* proceedings before the state courts; and the matter now awaits decisive action by some higher authority. In Nebraska the national court, October 5, enjoined the state officers from enforcing a law regulating the business and rates of stock yards, on the ground that it took property without compensation. — Projects for the taxation of inheritances have failed in New York and Pennsylvania. In the former state the bill described in the last RECORD (p. 365), after passing both houses of the legislature, was on May 21 vetoed by the governor. In Pennsylvania a state court decided, June 4, that the recently imposed inheritance tax on personal property was in conflict with the state constitution.

LABOR CONFLICTS. — A widespread **strike of bituminous-coal miners** was inaugurated July 5 by order of the United Mine Workers of America. The object of the strike was an increase of wages; and the region affected included western Pennsylvania, Ohio, Indiana, Illinois and to some extent West Virginia and Kentucky. A great diversity and complication of interests were involved in the strike, both workmen and employers being divided into jealous factions. The strike was practically terminated by an agreement reached early in September, which involved a concession of an increase of wages equal to seventy-five per cent of that demanded by the miners. After this settlement, however, the conflict was continued in vari-

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ous regions, especially in Indiana and Illinois, where the terms of the agreement were not satisfactory. The progress of the strike during the summer brought anew into prominence the application of the much-denounced "government by injunction." As a means of preventing the working of mines by non-union men, in various places, notably western Pennsylvania and West Virginia, permanent camps of strikers were established on leased private property, and the roads by which the non-union men went to and from their work were regularly beset by bodies of strikers, seeking by persuasion and entreaty to induce the workers to join them. Organized masses of strikers also marched from place to place with the same purpose. Stringent orders were issued by the leaders of the strike to avoid everything in the nature of violence or breach of the peace, and these orders were very generally obeyed. Despite this policy, however, occasion was found for resort to injunctions. Under the influence of professional agitators, — Messrs. Sovereign, Debs and others, — who repaired to the region, the activity of the strikers assumed a threatening aspect, and the protection of the courts was invoked by the mining companies. Both state and federal judges granted injunctions. Though the terms of these orders did not warrant the picturesque assertion of Mr. Debs that he had been "enjoined off the earth," they could be and were so construed as to apply to many of the proceedings incidental to the methods of the strikers. The latter were excluded absolutely from the property of the mine-owners, were prohibited from "interfering with the employees of [the owners] in passing to and from their work, either by threats, menaces or intimidation," and from "unlawfully inciting persons who are engaged in working the mines to cease from working in the mines, or in any wise advising such acts as may result in violations and destruction of the rights of the plaintiff in this property." A Pennsylvania court's order specifically enjoined the strikers from "assembling, marching or encamping in proximity to said mines . . . for the purpose, by intimidation, menaces, threats and opprobrious words, of preventing" the working miners from continuing at work; and by virtue of this order the sheriff of the county concerned put an end to the marches of the strikers and prevented some of their meetings. A little later, August 15, the United States court in West Virginia issued a series of orders of similar content, which were followed by similar results. The strikers complained that their constitutional right to assemble and walk upon the public highways was infringed by these orders, but the higher courts, both state and national, sustained the lower in the view that systematic and exclusive occupation of the highways for the purpose of interfering with adjacent property-owners was an abuse of the right. — On September 10 a fatal collision occurred at Hazleton, Penn., between a body of striking miners — not connected with the great strike described above — and the sheriff of the county and his deputies. The strikers, mostly Hungarians, had been marching about the region in a disorderly manner, intimidating other miners, when the sheriff and his force met them and sought to stop their further progress.

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An attempt to arrest one of the marchers brought on a struggle, upon which the deputies opened fire with rifles and killed some twenty or more of the strikers. The remainder dispersed, and order was maintained afterward by a large force of militia which was hastily sent to the place.

MUNICIPAL AFFAIRS. — The leading event in this field was the first election for officers of the "Greater New York," whose charter goes into effect with 1898. The campaign acquired a special character by the activity of an organization known as the Citizens' Union, which framed a platform looking to the separation of municipal from national and state politics, and to the exclusion of both Republican and Democratic "machines" from control of the city. The Union nominated Seth Low for mayor and gained the support of large numbers from both Republican and Democratic camps. Both regular party organizations entered the contest. The Republicans, led by Senator Platt, nominating General Tracy, and Tammany Hall, led by Mr. Croker, nominating Judge Van Wyck. A fourth leading candidate, in the person of Henry George, was named by a body of enthusiastic devotees of Mr. George's social and economic theories, and was supported by many anti-Tammany Democrats. The sudden death of Mr. George from apoplexy, October 22, in the midst of an energetic campaign, was a dramatic feature of the contest. The election took place November 2, and resulted in the triumph of Van Wyck by about 80,000 over Low, Tracy falling behind Low by about 50,000. In lesser cities recent elections showed more favorable results for independent candidates. Indianapolis, Atlanta and Rochester chose mayors without reference to the national parties. — In November Philadelphia formally abandoned its municipal gas works by leasing them for a long term to a private corporation.

LYNCH LAW. — The list of lynchings reported in the newspapers during the period under review is by far the longest for any equal period in many years. The total number that has come to the notice of the compiler is forty-three. Of these thirty-five were in the late slave states and eight in the rest of the Union. The victims included, in the slave states, twenty-nine negroes and six white men; in the other states, one black and seven whites. The offense charged was actual or attempted rape in twenty-four cases, — twenty blacks and four whites, — and other crimes in nineteen cases, — ten blacks and nine whites. Many features of the summer's record were very discouraging to the authorities and to that element of the people who are striving to abate the evil. Thus, at Princess Anne, in Maryland, a negro who had just been convicted of assault upon a white woman and sentenced to death was taken from the sheriff at the court house and hanged forthwith. At Williamsburg, Kentucky, a white man, under sentence of twenty years' imprisonment, was likewise taken from jail and hanged. The usual excuse, the law's delay, was wholly lacking in these cases. Farther south, in Georgia and Alabama, several newspapers have assumed an attitude of open approval and encouragement of lynching in cases of rape. A prominent woman speaker in Georgia made a public address to the same effect at

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a fair at Savannah, August 11. In the Northern states two incidents excited especial attention. At Urbana, Ohio, June 3, a negro, after assaulting a white woman, was convicted and sentenced to twenty years' imprisonment the day following his arrest. On the next night a mob attacked the jail, but was fired on with fatal effect by a militia company which was on guard. Later the attack was renewed and the negro was taken and lynched. None of the lynchers was brought to justice, but the sheriff and many of the soldiers were obliged to leave the town on account of the indignation manifested by friends of those who were killed in the attack on the jail. At Versailles, Indiana, on September 15, a mob took from the jail and hung five men who were implicated in a series of robberies that had been perpetrated in the vicinity. Here, again, though the executive authorities displayed much activity, no punishment of the lynchers has been announced.

II. FOREIGN NATIONS.

EUROPEAN INTERNATIONAL RELATIONS. — The dominant topic in this field has been the adjustment incidental to **the war between Greece and Turkey.** The net result of negotiations covering the whole period under review has been the conclusion of a preliminary treaty of peace between the hostile powers. On May 11 Greece accepted the conditions on which the great powers had agreed to intervene for the termination of the war. The conditions were that Greece should consent to the autonomy of Crete, recall her troops from that island and follow implicitly the advice of the powers in the establishment of peace. The Porte at first refused the request of the powers for an armistice; and on May 17 the Turkish Army attacked and carried the position of the Greeks at Dhomoko, driving the defeated forces entirely out of Thessaly. On the following day, under strong pressure from the powers and on the request of the Czar in a personal message, the Sultan ordered a suspension of hostilities. Then began the long diplomatic conflict over the terms of peace. The Porte demanded the annexation of Thessaly, a war indemnity of £10,000,000 and the abolition of certain privileges enjoyed by Greek subjects in Turkey. All that the powers would agree to was a slight rectification of the Thessalian frontier in favor of Turkey and an indemnity of £4,000,000. By the familiar method of playing upon the mutual jealousies of the powers, the Porte postponed until the middle of July acceptance of their terms, and yielded then only after somewhat peremptory warnings of serious consequences that might follow a longer delay. Questions of detail as to the time and manner of evacuating Thessaly and as to the security for payment of the indemnity prolonged negotiations for two months longer. It was finally arranged that the administration of the Greek revenues assigned to the service of both the old national debt and a new indemnity loan should be entrusted to a committee of representatives of the great powers, and that the Turkish troops

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should be withdrawn from Thessaly when the working of this arrangement should have been assured. On September 18 the preliminary treaty was signed by the Sultan. According to its provisions, Greek and Turkish plenipotentiaries shortly after began negotiations for the definitive treaty of peace. — **The Cretan question** has been left almost entirely in abeyance, on account of the attention demanded by the other phases of the general Eastern situation. In May the Greek force, whose occupation of the island had precipitated the crisis (see last RECORD), was withdrawn. Thereafter the blockade which the powers maintained was greatly relaxed. No steps were taken, however, toward the definitive establishment of the autonomous *régime* proposed by the powers, and as between Mohammedans and Christians the hostile *status quo* has remained practically unchanged. The Christians, with an organized assembly, control the interior of the island and agree to accept the proposed autonomy, but not until the Turkish garrisons are withdrawn from the coast towns. The Sultan declines to withdraw the garrisons, on the ground that they are necessary to protect the Mohammedans against the Christian insurgents. The naval forces of the great powers, occupying the chief towns, are kept busy restraining both parties from flying at each other. Early in October the Sultan solemnly urged upon the powers the necessity of settling matters, but revealed that his method of settling was wholly inconsistent with that already agreed upon by the powers. It was announced early in November that the powers had chosen a Colonel Schaeffer, of Luxemburg, as the Christian governor of autonomous Crete. — Of the customary summer visits by the heads of European states, those paid to the Russian Czar by the German Emperor and the President of the French Republic, respectively, attracted the greatest attention. The journey of President Faure to St. Petersburg in August had been arranged long before. That the German Emperor visited the Czar a few weeks in advance of the French President was the cause of much comment and of very ingenious calculations as to the relative enthusiasm which the two excited among the Russian courtiers and populace. President Faure's visit proved, however, the more sensational from the fact that it was made the occasion of an announcement of a **formal alliance between France and Russia**. On August 26, at a farewell luncheon on the French man-of-war which was to bear the President home, the Czar, in proposing a toast, used the words: "Our two nations, friends and allies"; and, to leave no doubt on the subject, the Russian sailors united with their cheers for France the new cry: "Vive l'alliance." Though the existence of an alliance was thus put beyond doubt, no information was made public as to its terms.

GREAT BRITAIN AND IRELAND. — The most striking and not the least important political incidents of the period centred about the celebration of the Queen's Diamond Jubilee. June 22 was the sixtieth anniversary of the monarch's coronation, and already before that date her reign had exceeded in length that of any of her predecessors on the throne. This

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double occasion was the basis of extended and elaborate demonstrations of loyalty and affection from her subjects all over the world. From a political point of view the salient feature of the festivities at London was the emphasis put upon the imperial idea and the attention paid to the representatives of the colonies and dependencies. In response to special invitations, the prime ministers of all the self-governing colonies came to take part in the celebration; and under the auspices of the colonial secretary, Mr. Chamberlain, there was held a series of **conferences of the colonial premiers** on matters of general interest. These conferences resulted in expressions of opinion by the premiers as follows: that any treaties which hamper the commercial relations between Great Britain and her colonies should be canceled, and that steps should be taken toward preference by the colonies to the products of the United Kingdom; that existing political relations between the colonies and the mother country were generally satisfactory; that federation of geographically united colonies is desirable, and that periodical conferences like the present for the whole empire ought to be held; that the existing naval arrangements for the protection of Australasia were satisfactory; that steps toward uniformity in organization and equipment of the military forces of colonies and mother country were desirable; and that the British restrictions upon the investment of trust funds in colonial stocks ought to be removed. Various other topics were also discussed, but in most cases any conclusion was rendered unimportant by the uncertain conditions of parliamentary majorities in the colonies. One prompt result of the conferences was the denunciation by the British government, July 30, of the commercial treaties with Germany and Belgium. These treaties secured to those nations — and hence to all others having most-favored-nation rights — the same tariff rates in British colonies that were given to Great Britain. Only by getting rid of the treaties, therefore, could Great Britain profit by the preferential duties hoped for from the colonies and already granted by Canada. Another incident in the *rapprochement* of colonies and mother country was the unconditional contribution by the Cape Colony of the cost of a first-class battleship to the imperial treasury. — **Parliament** remained in session till August 6. The government met with no important obstacles in carrying out its program of legislation. Its most important measures were that giving additional aid to board schools, passed by the Commons May 20, and the Compensation for Accidents Bill, passed by the Commons July 15. The latter act gives greatly increased facilities to workingmen for enforcing against employers claims for compensation in case of accidents occurring in the line of duty, but does not prohibit employees from contracting out of its provisions. Incidentally to the discussion of Irish business, Mr. Balfour announced, May 21, that the government would introduce at the next session a project for the radical modification of local government in Ireland, with a view to the extension of popular control. — The representatives of **Ireland** in the two Nationalist factions signalized their irreconcilable atti-

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tude by refusing to vote for the congratulatory address from the Commons to the Queen on the occasion of her jubilee. A very bad condition of the crops in western Ireland, and especially of potatoes, was made the basis of a petition by the members of the Irish parties for an immediate assembling of Parliament to take steps for relief against impending famine. The petition was denied. — The Parliamentary committee on **investigation of the Jameson raid** reported July 13. The report condemned the raid in severe terms, visited unqualified censure upon Mr. Cecil Rhodes for his connection with the affair, found two other directors of the South Africa Company guilty of complicity, but absolved the rest, and exonerated the officials of the colonial office from all knowledge or responsibility in connection with the raid. No steps were taken to punish anybody whom the committee held responsible. — A conflict between employers and employees in the engineering business, which began in July, had not terminated at the close of this RECORD. The chief point at issue was the eight-hour question, the employers, who to some extent had conceded the demand for the eight-hour day, having resolved that they could not adhere to this system. Strikes and lockouts resulted throughout the United Kingdom. Each side is thoroughly organized, and the duration of the struggle has been prolonged by the apparent determination of the employers to break once for all the power of the trade union. Incidentally to this conflict considerable progress has been made in the development of "The Free Labor Protective Association" — an organization of employers, including all kinds of business, for the purpose of effectively opposing the trade unions, especially in the use of such methods as "picketing."

THE BRITISH COLONIES AND INDIA. — The Canadian Parliament remained in session till June 29. Its legislative work included the enactment of the new tariff, described in the last RECORD; an act giving to the Northwest Territories a government by legislature and responsible ministry; and an act to prevent the entrance of workmen from the United States under contract to labor in Canada. This last act was avowedly designed to retaliate upon the United States for the alleged harsh and unfair administration of its alien-contract-labor law at Detroit and Buffalo. The application of the Canadian law was left discretionary with the government, to see if more satisfactory procedure should follow its enactment; in July it was put in force. A number of other measures were brought forward aiming to curtail the privileges and enhance the burdens of United States citizens having interests in Canada, the cause of all being the provisions of the Dingley tariff that bore with great severity on Canadian commerce. The retaliatory bills were not favored by the ministry, but they had large support among the members. An abrupt and unexpected prorogation prevented some of the worst of them from becoming law. Owing to the treaties with Germany and Belgium which were denounced in July (*supra*, p. 746), the Canadian government was obliged to extend the preferential rates of its tariff to some fifteen countries besides Great Britain and her colonies. When, at the

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end of a year, these treaties expire, the preference will be limited to British goods alone. — The convention at Adelaide completed on April 23 the draft of a scheme for **Australian federation**. The most animated contests in the convention turned on the organization and powers of the upper house — the "States Council" — of the proposed federal government. On these questions the division in the convention was on the line of small colonies against large. The draft as completed provided for the equal representation of the states in the council, but prescribed that money bills should originate in the lower house — where representation was according to population — and should be subject to rejection but not to amendment by the upper house. The convention's draft was submitted to the various legislatures during the summer sessions and was by them subjected to many amendments. In September the convention assembled again at Sydney. Before its work was completed, however, it adjourned till January, in order that Queensland, which had hitherto been prevented by internal dissensions from sending delegates, might participate in the final discussions. The ultimate result of the convention's work is to be submitted to popular vote in the various states. — The vigor of the British administration has been tested by a series of **disturbances in India**, some of which are supposed to have been inspired by the reports of the Turkish Sultan's victory over the Christian Greeks. A restiveness among the Mohammedan population of the country, and an aggressive tone in their press, created some apprehension among the European residents. On June 30 Chitpur, a suburb of Calcutta, was the scene of rioting which lasted several days, and which originated in Mohammedan claims that a mosque had been violated. It was on the northwestern frontiers of India, however, that the most serious trouble arose. In June a series of uprisings began among the tribes of Mohammedans in the mountains between the British and the Afghan territory. The movement began with the preaching of a religious fanatic proclaiming a holy war. During the summer the insurrection spread until most of the passes, including the important Khyber, were in the hands of the tribesmen and Peshawur was threatened. Brisk fighting was required on the part of the British troops to make headway against the insurgents, and heavy losses were incurred; but by the end of this RECORD the lost positions had been recovered and the tribes adequately punished, except in the neighborhood of the Khyber pass, where heavy fighting was in progress with the Afridis. The Ameer of Afghanistan, who was at first suspected of encouraging the insurgents, published at the end of September a vigorous denunciation of their acts and aims. The Hindoo as well as the Mohammedan subjects of the Queen contributed to the disturbances of the period. The particular occasion for their share was the proceedings of the administration in trying to stamp out the plague in Bombay and Poona. The measures employed for discovering and cleansing infected regions called forth bitter complaints from the lower classes of natives, and these were made the basis of attacks on the government by the Hindoo press. In connection with these attacks was expressed the wide-

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spread hostility to British rule which pervades the educated classes of the Hindoos, especially those who have imbibed the radical spirit in politics. At the end of June two English officials were assassinated at Poona, and secretly circulated pamphlets of a highly seditious character were discovered. A month later the police arrested several wealthy and influential Hindoos on charges of inciting disaffection. Among the prisoners was Gangadhar Tilak, a member of the Bombay legislative council, who had shortly before published in a Poona paper an article which was alleged to embody incitements to sedition and assassination. The accused was later convicted. Other newspaper writers were expelled from the country. The government's strong measures seemed to be having a satisfactory effect, though the excitement rose very high. The plague has not entirely disappeared, but has become less manifest. As to the famine, the weather has indicated that it will be at an end when the season's crops are harvested. The number of persons on relief rose during the summer to above four million; and the Mansion-House fund amounted, when it was discontinued in September, to £550,000. The total cost of the famine was estimated by the secretary of state for India at about £10,000,000, of which the part borne by the Indian government brought its finances into a desperate condition.

FRANCE. — The internal politics of France has presented no features of striking significance. **The Chambers** were in session from May 18 to July 20, and assembled again for their autumn session on October 19. The most important legislation accomplished included a slight readjustment of the direct tax on land, the renewal for twenty-three years of the note-issuing franchise of the Bank of France, and a law authorizing the President to put in force by decree the duties embodied in a new tariff bill at the time the bill is introduced. An attempt of the opposition to commit the Chamber to the policy of an income tax was defeated by a small majority. The budget, presented on May 18, embodied no innovations. — **The Panama scandal** was temporarily revived by the appointment of a new committee of investigation by the Chamber of Deputies at the end of June. The committee expected to receive a full confession which was promised by Cornelius Herz, who had been intimately involved in the affair, and who was an invalid in England. The committee prepared to visit Herz in a body, but at the last moment he imposed such conditions on their coming that they abandoned their purpose and expressed their conviction that they had been trifled with. — **President Faure** has been twice the object of supposed Anarchistic attempts at assassination. On June 13, as he was driving to the races, a bomb was exploded close to his carriage; and on August 31, in the midst of his enthusiastic reception at Paris upon his return from Russia, a bomb was exploded on the route of the procession. In neither case was injury done to either the President or anybody else.

GERMANY. — The session of **the Reichstag**, which terminated June 25, produced but small legislative results. Practically the only two impor-

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tant measures that were passed were dictated largely by the Agrarian Party. An Oleomargarine Bill, adopted in May, put severe restrictions upon the manufacture and sale of various substitutes for dairy products; and the Emigration Bill (see last RECORD), which was passed at the same time, was designed in part to keep down the cost of farm labor by decreasing emigration. A further purpose of this latter act was that of diverting the course of emigrants from North America to the South American countries, where German feelings and characteristics were less quickly and completely lost by absorption in the native populations. — In the middle of May the government formally declared that the methods of procedure adopted by brokers to evade the provisions of the new Bourse Law (see last RECORD) would not be recognized as effecting their purpose. Accordingly, the informal assemblies that took the place of the disbanded produce exchanges were subjected to government regulation, as required by the law. — A considerable **remodeling of the imperial cabinet** was effected during the summer, though personal rather than political motives seemed to have played the chief part in it. As minister of the interior, Doctor von Bötticher was succeeded by Count von Posadowsky-Wehner, who became also the general deputy of the chancellor; the vice-presidency of the Prussian ministry, which was also resigned by von Bötticher, was bestowed on Doctor von Miquel, the Prussian minister of finance. As minister of foreign affairs, Baron Marschall von Bieberstein was succeeded by Herr von Bülow. Admiral Tirpitz succeeded Hollmann as minister of marine; and changes were made at the head of the treasury and of the Post-Office. — A very hot conflict arose in the summer in the Prussian Landtag over a proposed modification of the **law of associations**. In accordance with a promise of the prime minister that the law should be changed, a bill was introduced by the government in May. The change expected was a repeal of the prohibition against the union of associations. Together with this, however, the government's draft embodied a number of new provisions, strengthening the control of the police over associations and meetings of a political character. The Radicals and Liberals, aided by the Clericals, stoutly opposed the measure and in the lower house of the Landtag stripped it of all the new reactionary features. The upper house restored them, and even accentuated the specific purpose of the bill by giving to the police in terms the power to "dissolve meetings in which Anarchist or Social-Democratic movements are manifest, aiming to overthrow the existing order of state or of society." In this form the bill was passed by 112 to 19. On the next day, July 23, the lower house rejected it by 205 to 209, and the session was then closed. The discussion of the bill excited much attention, and the Reichstag, before its adjournment, passed by 207 to 53 a bill for the empire embodying the provisions that were favored by the Liberals. This action had, however, no chance of approval by the Bundesrath, and availed merely as a vote of censure on the action of the Prussian ministry. Another result of the agitation was the formal resolution of the Social Democrats, in their party convention,

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hereafter to contest seats for the Prussian Landtag, where they have never yet had a representative.

AUSTRIA-HUNGARY. — The Austrian half of the dual monarchy has been throughout the period under review agitated by the **conflict between Germans and Czechs**, of which the first scenes were noticed in the last RECORD. The prime cause in this present renewal of an ancient feud was the disruption of the German Liberal Party by the anti-Semitic and Clerical movements, and the necessity thus put upon the government of getting the support of the Young Czechs to complete its majority in the Reichsrath. A "language-ordinance" was issued in April, putting the Czechish on a par with the German as the official language of Bohemia and Moravia. This concession was followed by violent demonstrations of hostility to the government by most of the German factions in the Reichsrath. By a course of systematic obstruction the opposition prevented the transaction of any business during May, and on June 2 the fruitless session was ended by imperial order. From the parliament the manifestations of race prejudice were then transferred to local assemblies, both official and popular. Many large meetings of Germans were held in Bohemia to protest against the government's policy; and these gave rise to interference by the police and to street conflicts with the Czechish populace. At the same time the local authorities in the German districts refused to carry out the language-ordinance, and contrived various methods of obstructing the administration. The whole summer was filled with incidents of the agitation. In August Prime Minister Badeni sought to bring about a compromise between the excited nationalities, on the general lines of that adopted in 1890 but never enforced. The German leaders, however, refused to negotiate till the offensive language-ordinance should be revoked. Meanwhile the conflict in Bohemia and the concessions to the Czechs had aroused the other nationalities of the empire, and the old demands of the Croats, Slovenes, Ruthenians and radical Poles were renewed in various forms. A special stimulus to these was given by certain tentative propositions by Count Badeni looking to federalism in the empire. Upon the reassembling of the Reichsrath, September 23, the sessions were attended by even more violent scenes than those in the spring. Certain leaders of the German popular party devoted themselves to virulent and disorderly attacks on the other nationalities and on the government. Premier Badeni took personal offense at one of the Germans named Wolff, and a duel was fought, in which the prime minister received a slight wound. The duel seemed to act as a general safety valve for excited emotions, and for a time a relative calm came over the parliament's proceedings, though the policy of obstruction was none the less resolutely adhered to by the Germans. A proposition of Count Badeni to introduce some form of closure failed to find favor with the government parties, especially the Czechs, who had themselves often found obstruction useful. In the middle of October the opposition brought forward again a series of propositions to impeach the prime minister and several of his col-

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leagues. On the 26th the president of the Reichsrath, Doctor Kathrein, resigned, worn out with futile efforts to maintain order in the house. Up to the close of the RECORD no legislative business had been accomplished. — In **Hungary**, also, parliamentary obstruction played a large part in politics during the summer. For two months a government bill extending jury trial to all kinds of crimes was held in suspense by the minority because it excepted certain minor press offenses from its provisions. The deadlock was terminated about the first of August by mutual concessions, and the ministry's program was completed. The efficient impulse to a settlement seems to have been the general desire to strengthen the ministry's hands in the negotiations with Austria for the renewal of the Compromise of 1867. By the attitude of the opposition in the Reichsrath and the uncertainty of Count Badeni's position, the progress toward an agreement had been stopped, but the Hungarians were keenly alive to their interests and were eager to hold their own when the time came. At the resumption of its activity in October the lower house of the Diet passed a bill prolonging for a year the old Compromise. In the preliminary negotiations between the two governments as to the quotas of contribution to the imperial expenses, — the crucial point in the Compromise, — the nearest approach to an agreement was reported to have been an offer by Hungary of 34.6 per cent and a demand by Austria that it should be 36 per cent.

RUSSIA. — The most important governmental acts that have come to public notice have been: (1) the institution of extensive reforms in the administration of justice throughout Siberia, designed apparently both to meet new needs that are expected to arise upon the completion of the great railway and to strengthen the central control over local affairs; and (2) the adoption of a law, August 8, extending the government monopoly of alcohol to all parts of Russia in which it was not already in force. — There were some indications in the press during the summer of better relations between the imperial government and the Poles. The Czar paid a visit to Warsaw early in September, and it was reported afterward that a plot to assassinate him while he was in the city had been discovered and thwarted.

ITALY. — Political life has been devoid of striking incidents. In the session of parliament, which lasted till July 15, the di Rudini ministry had plain sailing. The adoption of the budget and an army-reorganization bill constituted the chief work. The ministry announced as to Africa an explicit purpose to relinquish all the Red Sea territory except Massowah and a very small region around it, and to retain that much only because of the complications that might arise among other European powers if it were abandoned. The probability of any modification of this policy seems remote, owing to the fact that Crispi, its chief antagonist, has been seriously compromised by the results of judicial investigation of the bank scandals.

SPAIN AND CUBA. — The apparently favorable position attained by the government in its colonial affairs at the opening of this RECORD was soon followed by an unfavorable development in internal politics. On May

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24 the Sagasta Liberals and the Conservative adversaries of Prime Minister Canovas formally withdrew from the Cortes, signifying thus the termination of the agreement under which they had patriotically abstained from opposing the government during the difficulties in Cuba and the Philippines. The immediate occasion for the withdrawal was found in a personal altercation, attended by blows, between the Duke of Tetuan, minister of foreign affairs, and a prominent Liberal senator. On June 2 the Cortes was prorogued and the Canovas ministry at once tendered its resignation. After a few days of negotiations, however, the Queen Regent refused to accept it, and the ministers resumed their functions. The Liberals, led by Sagasta, demanded a change of policy in reference to Cuba, involving the recall of General Weyler and the concession of a more extensive autonomy than that hitherto offered. Canovas, on the other hand, maintained his confidence in the personality of Weyler and in the concessions already made. On August 8 the prime minister was assassinated by an anarchist named Golli at Guesalibar, a health resort in the north of Spain. No change of cabinet followed, the minister of war, General Azcarraga, assuming at first provisionally and then definitively the position of premier. The hope of continuing in power depended on the possibility of winning dissident Conservatives to the support of the ministry's Cuban policy. This hope failed, and on September 29 the Azcarraga cabinet resigned. Sagasta was then called upon, and on October 4 he announced a cabinet composed chiefly of his Liberal followers, with Moret as minister for the colonies and Gullon at the head of foreign affairs. — The murderer of Canovas was executed August 20. At Barcelona the Anarchists manifested their continued existence by an unsuccessful attempt to murder two police officials of the city September 4. — **The situation in Cuba** did not retain during the summer the favorable aspect in which the Spaniards rejoiced at the end of the last RECORD. The withdrawal of Liberal support in Spain made Premier Canovas especially anxious to show results that would vindicate his Cuban policy; and, apparently under the stimulus of urgings from Madrid, General Weyler, in the latter part of June, entered upon a campaign in large force against the insurgents in the eastern end of the island. The most conspicuous result of the movement was a sudden and effective revival of insurgent activity in the central and western provinces, from which Spanish troops had been drawn for the movement in the East. The guerilla tactics of the Cubans kept all the towns, even Havana itself, in a state of apprehension. During July the Spanish authorities sought to treat with the insurgent leaders through an offer of amnesty and home rule. The advances, however, were rejected. Early in September the insurgents in Santiago de Cuba gained a sensational victory in the capture of Victoria de las Tunas, a Spanish fortified place, with its garrison. This event caused renewed attacks in Spain on General Weyler and his policy and seems to have contributed much to the fall of the Azcarraga cabinet. The Sagasta ministry, promptly upon taking office, announced a change of policy toward Cuba, and replaced Weyler as captain-general

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by Ramon Blanco. The new policy was said to involve the concession of a much fuller autonomy to Cuba than that offered by Canovas; but the details of the scheme have not been announced. Governor-General Blanco assumed authority October 30, and promptly modified some of the more oppressive features of Weyler's policy in the treatment of the Cubans. For example, the orders under which the country people in many districts were obliged to leave their homes and live in the towns were partially revoked. — In the Philippines the situation appears less favorable to Spain than it was at the close of the last RECORD. The Spaniards have failed to press the advantages they had then obtained, and the insurgents have had time to renew their strength.

MINOR EUROPEAN STATES. — The legislatures of **Norway and Sweden** succeeded in the summer in adopting a provisional commercial arrangement to take the place of the *zollverein* that terminated in July. The protectionist party is strong in Sweden; and, in addition to their desire on general principles for a high tariff, they have a disposition to employ their industrial advantage to bring pressure on Norway in the question of union. The joint commission on union has held another session, but without reaching a conclusion. The elections for the Norwegian Storthing were in progress during the latter part of the summer, and by the middle of October had reached a stage that insured a great triumph for the Radicals. As a consequence, the Hagerup coalition ministry prepared to give way to Steen and his separatist followers. — The crisis in **Denmark** mentioned in the last RECORD was adjusted by a reorganization of the ministry in May and the modification of the government's budget. — The federal legislature in **Switzerland** adopted during the summer the project for the purchase and operation by the government of the five chief railway systems of the country. — On the Danube the little states have passed the summer and autumn in general political calm. Prince Ferdinand of Bulgaria attracted attention in August by ostentatious demonstrations of affection and loyalty toward the Sultan. The prince visited Constantinople and while there conformed to all the ceremonial requirements that characterize the intercourse of subject with suzerain. The contrast between this effusive acceptance of a vassal condition and the prince's well-known aspirations to the royal dignity excited much comment and a variety of conjectural explanations. In Servia elections for the Skupshtina were held in July and resulted in almost a clean sweep for the Radical Party. Little effect was produced, however, on the government, which continued to act on the autocratic lines laid down by King Alexander at the last revolution. Steps toward the formulation of the new constitution long since promised by the king have been announced from time to time, but no definite result has appeared. The fall of the Simitch ministry in October was officially ascribed to a difference with the king as to the policy desirable on this point. — A **cabinet crisis in Greece** was precipitated by the presentation of the preliminaries of peace with Turkey to the legislature. Taking

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advantage of the deep discontent with the assumption of control over the finances by the great powers, M. Delyannis carried a vote of no confidence September 30, and the Ralli ministry resigned. The threatening attitude of both Turkey and the Christian powers, however, caused the hasty formation of a ministry headed by M. Zaimis, from which Delyannis was excluded.

AFRICA. — **The advance on Khartoum** by the Anglo-Egyptian Army has been successfully continued. Abu-Hamed was captured August 7; and a month later the very important town of Berber, much more than half way from Dongola to Khartoum, and in easy communication with Suakin on the Red Sea, was occupied. A railroad from Wady Halfa to Abu-Hamed, across the great bend of the Nile in which occur the second, third and fourth cataracts, was constructed during the summer, and provided great facilities for the security of the advancing force. — The situation in **the Transvaal** has lost the apparently critical character it bore at the end of the last RECORD. As a result of the energetic remonstrances of the British government, the Volksraad, upon the recommendation of President Krüger, repealed in May the Alien Immigration Act, which had constituted the most serious cause of tension. Further, the jubilee of Queen Victoria was recognized by making June 22 a holiday in her honor; and later a special commission on the industrial conditions of the republic reported in favor of reducing railway rates and modifying labor laws so as to benefit materially the mining interests. At the same time the negotiations for a defensive alliance, and also for a kind of federal union, between the Transvaal and the Orange River Free State were carried to a successful conclusion. — From **Abyssinia** the British and French missions returned with claims of having achieved their respective purposes, though official information is lacking. The question of territory in the equatorial region seems to have been conspicuous in the negotiations and to have been discussed with special reference to the purpose and progress of the Anglo-Egyptian advance up the Nile. The Negus Menelik in July appointed Count Leontieff, a Russian, governor of his equatorial provinces. Leontieff had recently conducted a Russian mission to Abyssinia, and had given grounds for a report that Russo-French influences were antagonizing those of Great Britain and Italy at the Abyssinian court. It was announced in September that Italy, after difficult negotiations, had reached an agreement with Menelik, under which the boundaries of the Italian colony were less favorable than Italy had claimed, but satisfactory terms as to commercial and diplomatic relations had been secured. — From **the Congo Free State** news came in the spring of a reverse to the force of Baron Dhanis, which has been for some time operating in the northeast in the neighborhood of the upper Nile. A rebellion of native troops broke up the campaign; but the commander, escaping to the posts on the Congo, collected reënforcements and returned to his task. The rebels were decisively defeated in July.

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THE ORIENT. — By a treaty, the ratifications of which were exchanged in June, China made to Great Britain some valuable concessions on the Burmah frontier, including the transfer of certain small parcels of territory and the grant of valuable commercial privileges. The importance of the treaty consists chiefly in the advantage secured by the British in their rivalry with the French for the controlling influence in that region. — It was announced in the middle of October that the King of Corea had assumed the title of Emperor. The change seems to have been connected with the more independent position acquired by the kingdom as a result of the recent Chino-Japanese War. — The relations between Japan and Hawaii have been somewhat strained throughout the period under review. The cause was the action of the Hawaiian government some time since in refusing admission of Japanese immigrants and summarily shipping a number of them back to Japan. This action was held by the Japanese government to be in violation of a treaty; it was unquestionably a reversal of a long-standing policy of Hawaii, which had freely admitted Japanese to fill the demand for laborers on the sugar plantations. An animated diplomatic controversy between the two governments was tending at last accounts toward a settlement by arbitration.

LATIN AMERICA. — Insurrections in **Brazil and Uruguay** continued throughout the summer to disturb those countries. Canudos, the stronghold of the Brazilian insurgents, was said to have been captured in July by the government's forces, but it was not till October that the leader of the rebels was slain and the final suppression of the uprising was effected. In Uruguay the civil war continued until the assassination of President Borda at Montevideo, August 25. As the main source of discontent had been the personal character and policy of Borda, his death was soon followed by an adjustment between government and insurgents, and peace was restored in September. — In **Chili** the difficulties between President Errazuriz and the Congressional majority continued till the end of the summer and produced a succession of cabinet changes, with no permanent effect. — **The Greater Republic of Central America** was strengthened June 15 by the conclusion of a treaty by which Guatemala and Costa Rica adhered to the arrangement already in force among the other three states (see last RECORD). In Guatemala President Barrios in June dissolved the legislature and assumed dictatorial powers. In the middle of September an insurrection against his authority broke out, and for a time the insurgents carried all before them. By the middle of October, however, Barrios had succeeded in turning the tables and in retaking the chief positions which the rebels had seized. — A movement for the adoption of the gold standard by Latin-American states has been caused by the decline in the price of silver. Thus far more or less definite action in the matter has been reported from Peru, Hayti and Costa Rica.

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